BRIEF

of the

Attorney for the Bakers

in the

Suit to Declare Void the Bread Law

of the

District of Columbia

with

The Opinion of the Court

and

A History of Bread Legislation

to which is attached an

Address by

H. B. LEARY

before the

District Commissioners on "Bread Laws"

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J 57

JANUARY TERM, 1909

IN THE

COURT OF APPEALS

DISTRICT OF COLUMBIA

(No. 4, Special Calendar)

THE DISTRICT OF COLUMBIA
Plaintiff in Error

vs.

GEORGE HAUF
Defendant in Error

No. 1966

Brief for the Defendant in Error

ALEXANDER H. BELL
For the Defendant in Error

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BRIEF FOR THE DEFENDANT IN ERROR

The motion of the defendant in error upon which the information against him was quashed by the Police Court was based upon six specific assignments of law, and his rights were further saved by a general assignment which apprised the lower Court that other grounds for the motion would be presented at the hearing. Such other grounds were in fact presented and argued. (Appendix A.) The specific assignments are set forth in the record and will be substantially followed herein, although not in the order of their assignment in the motion.

ARGUMENT

I

THE ORDINANCE HAS BEEN REPEALED

At the date of the enactment of the ordinance, if it in fact was ever regularly enacted, besides Congress, which had the right to exclusive legislative jurisdiction over the

District, there were therein three practically distinct governmental agencies, possessing various administrative and legislative powers, but generally restricted in the exercise of their powers to their own transcribed territories. These were the corporations of Washington and Georgetown and the Levy Court of the county. Passing the questions of their authority to enact and the regularity of the enactment thereof, all three had so-called "bread laws" (Appendices B, C and D).

Such were the conditions when Congress, on February 21, 1871 (16 Stat. 419) constituted the entire District a municipal corporation, repealed the charters of the two cities and abolished the Levy Court.

There can be no doubt that the intention of Congress in passing this Act was to have but the one corporate body, one set of executive and legislative officers and one uniform system of laws for the new organization. The Act specifically provides (Sec. 40), with reference to the laws and regulations of the former corporations and county, that all thereof, *not inconsistent with the Act,* shall remain in force until modified or repealed by Congress or the legislative assembly. The question therefore naturally arises, What was meant by the use of the word "inconsistent?" And to this there can be but one answer, viz.: *Inconsistent with the singleness of purpose and scope of the Act,* which was, as stated in its title, "To provide a government for the District of Columbia."

Applying the answer to the ordinances under consideration, it is difficult to conceive, particularly in the light of the absence of any provision, express or implied, extending either ordinance to the entire District, that it was the intention that there were to be three municipalities within the one new organization, and that bakers and venders of bread within one part of the corporate limits should be subjected to one law, while those in another part should be differently controlled. How different this control would be requires

only the most hasty comparison of the laws of the two corporations. (Appendices B and C.)

The intent of Congress to repeal inconsistent ordinances and establish a uniform system of laws for the District may further be gathered from certain provisions of the organic Act of June 11, 1878 (20 Stats. 102), which is entirely silent as to the continuance of the ordinances of the former cities and county, but specifically provides that said District and the property and persons therein shall be subject to the following provisions for the government of the same, "and also to *any existing laws applicable thereto* not hereby repealed or inconsistent with the provisions of this Act"; and again, "and all laws now in force *relating to the District of Columbia* not inconsistent with the provisions of this Act shall remain in full force and effect."

The conclusion from this is convincing that Congress at the time considered the *consistent ordinances* had ceased to be laws of a part of the District, but had become laws of the entire organization, and that the Act had worked a repeal of the inconsistent laws.

While repeal by implication is not looked upon with favor by the courts, inconsistency or repugnancy of laws, it has been held, works a repeal.

Lewis' Sutherland Stat. Con., Sec. 248.

A second reason for asserting this law has been repealed is to be found in the Code of Laws of the District, in Secs. 1, 1638 and 1640.

II

The Ordinance Does Not Constitute a Law of the District of Columbia

The information charges the defendant with violating an ordinance of the corporation of Washington *"and constituting a law of the District of Columbia."* It becomes pertinent, therefore, to inquire when, if ever, and in what manner did the ordinance become a law of the District?

Congress has never enacted any law prescribing the weight of bread, nor has it extended, adopted or re-enacted this ordinance as a law of the District. The legislative assembly was silent on the subject, and if the Commissioners have any powers in the matter they have not exercised them. If the Act of February 21, 1871 (16 Stats. 419), did not repeal the ordinance, *it did not extend it.* From neither of the Acts of June 20, 1874 (18 Stats. 116), or June 11, 1878 (20 Stats. 102), can any intent to constitute this ordinance a law of the District be inferred. It is true that almost a quarter of a century after the District became a municipal corporation, Congress, in constituting Georgetown a part of the City of Washington, provided (Act February 11, 1895, 28 Stats. 650) that *all general laws,* regulations and ordinances of the City of Washington be extended and made applicable to the new territory, and repealed *all general laws,* regulations and ordinances of the City of Georgetown. Was it the intention of Congress to extend the laws consistent and inconsistent, or which had been repealed because of repugnancy of the former various *corporations of Washington* and to repeal the laws of the former *corporation of Georgetown,* or was it the intent to extend or repeal, as the case might be, such laws, etc., as had been passed by the District from the time it was created a municipality, and which had especial application to one or the other of the two cities. How is it possible to answer this from the language used? It is to be doubted that had the legislative body made a studied effort to couch this Act in the most general and most indefinite language at its command it could have been more successful. What within the meaning of the Act are *general laws,* and how are the laws contra-distinguished from ordinances and regulations? But waiving all these questions and waiving also the question that the words employed are too general to work an extension of the ordinance under consideration, but on the contrary for the sake of argument admitting it had such an effect, *it becomes significant* that neither this particular Act

nor any other that counsel has been able to find *extended the laws,* ordinances and regulations *of the city* or corporation of Washington *to the county* or that part of the District lying contiguous to but outside the boundaries of the consolidated cities. This objection may be answered by opposing counsel saying, there was no need to extend the ordinance to the county, because the Levy Court had previously adopted the ordinance. Such contention cannot stand in view of the conditions, for two reasons, if not others; first, there is apparently extant no record that the Levy Court ever did adopt it; second, even if it did so adopt it was without any power so to do. Respecting the first reason it is to be noted that the alleged bread ordinance of the Levy Court (Appendix D) has so far as can be ascertained no existence except in the Birney compilation (Appendix E), the general scope and purpose of which is there shown. Taking the ordinance as there set out, it is to be further noted that it, differing from the other ordinances therein, does not purport to have been "ordained" by the Levy Court, and contains no signatures or attestations, and is also subject to other objections. Assuming, therefore, that the holding of the Court in D. C. vs. Johnson, 1 Mackey 62, is correct, and the District was called upon to prove the ordinance, it is to be imagined the duty would be attended with considerable difficulty. On the second reason, it may be properly urged that the Levy Court was never vested with any specific or even implied authority to so ordain. What may well be called the last organic act of the Levy Court was passed March 3, 1863 (12 Stats. 799). By this Act the membership, functions and jurisdiction of the Court were specifically prescribed and remained substantially as so established until the District was created a corporation. Examining this Act and those which preceded or followed it, it is difficult to imagine from what source the authority to ordain a bread law could have been derived. Undoutedly, therefore, unless the Levy Court had the power and authority to "ordain" such an ordinance and actually did act within

its rights, the ordinance does not constitute a law of the District, but is, at most, passing the objections heretofore pointed out, only a law of the city of Washington as made up of the territory formerly embraced within the two cities.

III

Such an Ordinance Was Not Authorized by Any Charter to the Corporation of Washington

A

The Charter Provisions

The first attempt at a Congressional delegation in favor of the corporation of Washington to enact a law prescribing the weight of bread is to be found in the Act of February 24, 1804 (2 Stats. 424), which was supplementary to one by which the city was incorporated, the delegation being in general terms, to regulate *"the weight and quality of bread."* The second attempt is to be found in the Act of May 15, 1820 (2 Stats. 583), the authority therein being in the identical language of the previous Act, viz.: to regulate *"the weight and quality of bread."* The Act of March 3, 1809 (2 Stats. 332) delegates to the corporation of Georgetown the power to establish *"the assize of bread."* As has been heretofore said there would seem to be no Congressional authority in favor of the Levy Court on the subject. None of the three Acts which concern the District as a municipal corporation specifically vests, even in general terms, any like authority.

B

Bread Ordinances of the Corporation of Washington

None of the ordinances of the corporation seem to have been officially compiled or published, but so far as they can be traced in the matter under consideration would seem to be:

1. An Act approved April 17, 1806 (Appendix F), and which it is to be observed is an old form of "bread assize." Under this assize the weight of bread was regulated by the fluctuating prices of flour. A violation of this law was constituted by selling bread *deficient in weight* or quality.

2. An Act supplementary to the first one, and which was approved October 3, 1809 (Appendix G). This Act did not change the assize, but did materially extend the right of search.

3. An Act amendatory of the first, approved December 23, 1814 (Appendix H), and which merely established a new table of weights.

4. An Act approved May 18, 1842 (Appendix I), which specifically repealed the first three and generally repealed all other bread laws. This ordinance was a "pure food" measure, and did not attempt to regulate the weight or price.

5. An Act approved April 17, 1845 (Appendix J), and which re-establishes tables of weight proportioned to the cost of flour.

6. An Act approved April 20, 1850 (Appendix K), which is another "pure food" law containing requirements whereby violations of its provisions may be readily detected, but does not attempt to regulate weight or price.

7. An Act approved August 31, 1854 (Appendix L), which establishes the weight of bread, as half loaves of eight ounces, the loaf of sixteen ounces, and the double loaf of thirty-two ounces, avoirdupois.

8. An Act approved April 26, 1855 (Appendix M), which merely provides that "bread shall be sold by weight in avoirdupois pounds and ounces."

9. The Act which is now under consideration, approved January 7, 1858 (Appendix B), and which will be more fully treated hereafter.

The Georgetown ordinances, so far as they can be traced are:

1. An Act approved June 16, 1806 (Appendix N), and which was an assize regulation, establishing weight on the basis of cost of flour, *but fixing the price of single loaves* at not more than 6½ cents, and of double loaves at not more than 12½ cents.

2. An Act approved August 28, 1806 (Appendix O), which merely changes the table of price and establishes a a new one.

3. An Act of April 30, 1808 (Appendix P), which established a new table proportioned to the cost of flour.

Note. In an index of the ordinances of Georgetown contained in the volume for the years 1851-1858, there is a reference to a bread law passed August 18, 1849, but if such were ever enacted, counsel has been unable to trace it.

4. An Act approved December 17, 1870 (Appendix C), which establishes a 16-ounce single loaf and a 32-ounce double loaf. Selling *light weight bread* under this ordinance constitutes the offence.

C

The Relation of the Ordinance to the Charters

The charters, as such and in their provisions with respect to the regulation of the "weight and quality of bread," can have no application to the District as an entirety, and cannot themselves be deemed as furnishing any warrant for a claim that there is charter authority for the enactment of a bread law for the District. Such warrant, if it exists at all, must be found in other statutes.

While the language of the charters is specific in a sense, viz.: in the subject matter thereof, *the weight and quality,* it is general in the sense that it prescribed no rules or modes in which the power granted is to be exercised,

what or how weights or qualities are to be prescribed or how, when prescribed, they are to be enforced.

It follows, therefore, that even if the charter and the ordinance be confined solely to the corporation of Washington, the former furnished no protection to the latter as to its unreasonableness. The test will still be, is the *ordinance a reasonable exercise of the power thus conferred?*

Lord Chief Justice RUSSELL succinctly stated the rule as follows:

> "In the first place we must see whether the legislature had given authority to make by-laws on the particular subject, and in the second place, if they have given authority, then we must consider whether that authority has been reasonably exercised in the case of the particular by-law in question."
>
> Attorney vs. Farrell, 18 Cox. C. C. 321.

The doctrine is stated by Judge DILLON in this manner:

> "Where the legislature in terms confers upon a municipal corporation the power to pass ordinances of a *specific and defined character,* if the power thus delegated be not in conflict with the constitution, an ordinance passed in pursuance thereto cannot be impeached as invalid, because it would have been regarded as unreasonable if it had been passed under the incidental powers of the corporation, or under a grant of power general in its nature. But when the power to legislate on a given subject is conferred *and the mode of its exercise is not prescribed,* then the ordinance passed in pursuance thereof *must be a reasonable exercise of the power,* or it will be held invalid."
>
> 1 Dillon's Mun. Cor. 3 Ed., p. 328.

The same principle in effect has been recognized by our Court of Appeals in a number of cases which will be hereafter referred to.

How the charter authority was construed and exercised by the legislators may in part be gathered from the ordi-

nances which it enacted, but the reasons for its enactments can only be ascertained by reference to the conditions then existing, and a consideration of the objects to be attained, for, as was said by the Court in Hawes vs. City, 158 Ill. 653: "The question of the reasonableness or unreasonableness of a municipal ordinance is one for the decision of the Court, and in determining that question the Court will have regard to all the existing circumstances or contemporaneous conditions, the objects sought to be attained, and the necessity or want of necessity for its adoption."

In this connection it is to be borne in mind that at the date of the passage of the two charters (1804 and 1820) a paternalistic system of state interference with various vocations to some extent prevailed, a system which, with the progress of civilization, has steadily decreased, until to-day its sphere of action is almost entirely confined to those callings and enterprises which are based upon some privilege or franchise, or as a matter of fact are public or quasi-public in their character.

Of course, the authority for governmental interference in the legitimate and necessary exercise of the police power of the State is still recognized, but all other sorts of governmental interference with the private affairs of man have been abolished by law.

An examination of the ordinances of the corporation of Washington will evidence that concurrently with the passage of the first bread law under the charter of 1804, it also had on its books ordinances against "forestalling," "regrating" and "engrossing."

At this time "assize of bread" laws were still in force in some parts of this country and in England, and in fact they continued in force in London and its immediate neighborhood until the year 1822 (Appendix Q). The reasons for the passage of these assize ordinances were probably then similar to those which made necessary the passage of the laws against forestalling, etc.

It is to be observed that although both charters delegated authority to regulate the weight and quality of bread, the exercise of the authority by the corporation consisted of the passage from the first law of April 17, 1806 (Appendix F), with the exception of an ordinance of May 18, 1842 (Appendix I) down to the ordinance of April 17, 1845 (Appendix J), of what were equivalent or akin to the old English assize ordinances.

A further fact to be noted is that the charter authority of 1809 to the corporation of Georgetown was to establish "the assize of bread," and that it exercised this authority (even before that authority was conferred) in the passage of three ordinances (Appendices N, O and P) of an "assize" nature. It is manifest that the legislators considered, down to the time stated and with the exception noted, their power was to be exercised by the enactment of assize ordinances and not in any other way. The Council of 1842 viewed the authority given as warranting it in repealing all the assize of bread laws and in providing simply a pure food measure. Then in 1845 the legislators went back to the assize system, and in 1850 a return of the pure food measure is to be noted. The year 1854 witnessed the first attempt to fix the weight of loaves without reference to the cost of flour. In 1855 the legislative body went a step further and provided that bread should be sold by weight in avoirdupois pounds and ounces. This was succeeded in 1858 by the ordinance now under consideration, in many respects the most vicious of all these remarkable ordinances. What has been said of the ordinances of Washington can also be said of the ordinances of Georgetown, the first legislators evidently deemed it their duty to enact assize laws only, until 1870, when a different view was taken of their powers and duty.

These references evidence several things: First, how differently the municipal legislators of different times viewed the authority vested in them to regulate the weight and quality of bread; second, the danger of leaving the

mode of the exercise of the powers to the municipality; and third, the wisdom of the rule which permits the courts in such cases *to see that the power conferred is reasonably exercised.*

Now as to the contemporaneous conditions, the objects to be attained and the necessity for such a law.

There can be no question, or at least it is highly probable, that at the time the two charters were passed, and even down to a much later period, the business of a baker was a business affected with a public interest; but this is no longer so.

That the business of a baker is a private business was recognized as late as 1904 by the Supreme Court of the United States, when, in deciding the New York State law regulating the hours of bakers to be unconstitutional, it said:

"It seems to us that the real object and purposes were simply to regulate the hours of labor between the master and his employees, *in a private business,* not dangerous in any degree to morals, or in any real and substantial degree to the health of employees."

Lochner vs. People, 198 U. S. 64.

A very great contrast is to be noted between conditions of to-day and of ancient times. Formerly the masses were dependent entirely upon the bakers, and public bakehouses were established. The work in the bakehouses *(pistrina)* of ancient Rome was performed by slaves *(pistores).*

Plutarch in Numan, 17th Ed., Reiske, Vol. 1, p. 283.

Later the *praefetus annonae* saw to the procurement of sufficient grain and had power to require the baker to have the necessary quantity and proper quality of bread and to fix the price. Both in England and on the Continent, during the middle ages, the homes of the people, particularly those congregated in the cities, had no facilities for the baking of

bread, and the common people were therefore entirely dependent upon the bakers for their supply of bread. Not infrequently was the exercise of the business of a baker dependant upon a municipal franchise, and sometimes was appurtenant to a particular house. During all this time, in England, on the Continent, in this country during Colonial times, and even after the establishment of the Union, not only the business of the baker, and the price, quality and often the quantity of his product were made the subject of State regulation, but most other callings were similarly considered to be affected with a public interest, including the occupation of the laborers and mechanics.

Text writers have recognized this tendency of the old laws:

> "In the early days of the common law it was sometimes thought necessary, in order to prevent extortion, to interfere, by royal proclamation or otherwise, and establish the charges that might be exacted for certain commodities or services. The price of wages was oftener regulated than that of anything else, the local magistrates being generally allowed to exercise authority over the subject. The practice was followed in this country and prevailed to some extent up to the time of independence. Since then it has been commonly supposed that a general power in the State to regulate prices was inconsistent with constitutional liberty."
>
> Cooley's Con. Lim., 7th Ed., Chap. XVI, p. 870.

And again:

> "The exercise of the power to regulate prices and charges for things and services was quite common in past ages; and there appeared to be no well defined limitations upon the power, if any at all were recognized. But under a constitutional and popular government there must necessarily be some limitation. It is a part of the natural and civil liberty to form business relations, free from the dictation of the State, that a like freedom should be secured and enjoyed in determining the conditions and terms of the contract which consti-

tutes the basis of the business relation or transaction. It is, therefore, the general rule, that a man is free to ask for his wares or his services whatever price he is able to get and others are willing to pay, and no one can compel him to take less, although the price may be so exorbitant as to become extortionate. No one has a natural right to the enjoyment of another's property or services upon the payment of a reasonable compensation; for we have already recognized the right of one man to refuse to have dealings with another on any terms, whatever may be the motive for his refusal. But there are exceptions to the rules which can be justified on constitutional grounds. *This general freedom from the State regulations or prices and charges can only be claimed as a natural right so far as the business is itself of a private character,* and is not connected with or rendered more valuable by the enjoyment of some special privilege or franchise. Whenever the business is itself a privilege or franchise not enjoyed by all alike, or the business is materially benefited by the gift by the State, of some special privileges to be enjoyed in connection with it, the business ceases to be strictly private, and becomes a *quasi*-public regulation. A special privilege or franchise is granted to individuals because of some supposed benefit to the public, and in order that the benefit may be assured to the public the State may justly institute regulations to that end. The regulation of prices in such case will, therefore, be legitimate and constitutional. But the regulation of prices will not be justified in any case where the law merely declared the prosecution of the business to be a privilege or franchise. If it be without legislation a natural right, no law can make it a privilege by requiring a license. *The deprivation of the natural right to carry on the business must be justified by some public reason or necessity.* Otherwise the general or partial prohibition is unconstitutional and furnishes no justification for the regulation of prices and charges incident to the business. But some of the courts are inclined to extend the exercise of this power of control to other cases, which do not come within the classes mentioned, viz: Those in which no special privilege or franchise is enjoyed, and in which there is no legal monopoly, but in which *the*

circumstances conspire to create in favor of a few persons a virtual monopoly out of a business of supreme necessity to the public."

Tiedeman on Lim. of Police Powers, p. 233.

While the habitations of the masses were not arranged for the baking of bread, rendering them thereby dependent upon the baker for their supply of bread, it could with truth be claimed that the business of a baker, although not a *legal* monopoly, yet by force of circumstances was practically a monopoly, and was a business affected with a public interest, and therefore a proper subject of State regulation, irrespective of the ordinary police power of the State. These were the conditions in olden times in England and on the Continent. In the smaller towns and villages, municipal bake ovens were established, to which the housewives brought their dough to be baked into loaf bread. The old-fashioned fireplace, the only cooking appliances accessible to the common people, were certainly not proper contrivances for the baking of loaf bread. Only the farmers and well-to-do in the cities could afford bake ovens. The people living in the tenements and in the hovels were dependent upon the baker. Such were the conditions, particularly in the early part of the last century, especially in the cities of the South, where a large part, if not the majority, of the population of the cities were negro slaves, and the climatic conditions were also unfavorable to the baking of bread in the habitations, such as they were. At the beginning of the nineteenth century the big fireplace in the living-room, serving as kitchen and dining-room, commonly served for both cooking and heating. Hinged to the right-hand jamb was an iron crane filled with dangling pothooks. It was pulled out so that pots and kettles might be hung on the hooks, and the crane was then hung back over the blazing fire. Potatoes were baked in the hot ashes. In the wall alongside the fireplace was built the brick oven, with its flat bottom and arched top, having an iron door in front. On baking day a wood fire was built inside of this oven, and when it was burned to

coals and the oven thoroughly heated, the fire was neatly removed and the bread placed on the oven bottom. But there was no room in the hovels and tenements of the poor for ovens, and the general fireplace with oven attachment was one of the privileges of the few in the large cities. These conditions have ceased to exist here and abroad, and the revolution of conditions has been brought about by the invasion of the modern cook stove, with its efficient bake oven. It was the Conant stove, first made at Brandon, Vermont, in 1820, which drove out the fireplace as a cooker and provided an oven above the fire, with a door in both ends, the front one being over the fire door. Important as was this invention, it took many years before it was put into general use, and was brought to the present state of perfection by such men as J. C. Hathaway in 1837, and P. P. Stewart in 1838 and 1850. To-day there is practically no household in the United States without a wood, coal, oil or gas range, containing an efficient oven capable of baking good loaf bread. The business of the baker has ceased to be a virtual monopoly, not merely because of the great competition among the bakers themselves, the small capital required to enter into the business and the simplicity of the machinery and other appliances required to carry on the trade in an ordinary way, but also, and mainly, because every household, having a stove and a cook, is in active competition with the baker. How different the business of the baker when compared with that of the butcher or green grocer! Bread can now be made in every household, but meat and vegetables cannot be so produced. If there is any business which is neither in law or in fact a monopoly, and which is exposed to the keenest and most general competition, it is the business of the baker. To say that *to-day*, under conditions as they *now* prevail in America, it is a business affected with a public interest, or devoted to a public use, is to make a statement in the teeth of the actual conditions as they are open to the observation of everybody. The business of the baker enjoys no special rights, privi-

leges or franchises; it has no special rights in the public streets or on the public highways; it does not depend upon the legislative will for its existence, or enjoy any special protection; and beyond all question, it is certainly not a monopoly, unless it be such by virtue of the ordinance in question, which by the limitations it puts on the weights of loaves, prevents free and unrestricted competition among those engaged in a common business. Another suggestion which may be made as tending to establish the change of conditions is that at the time of the grant of the charter powers mentioned, "bread" was "the staff of life," and because thereof required a certain amount of governmental protection; but this condition has long ceased to exist, and bread, instead of being *the staff* of life, is only one *of the many staves of life.* This change has resulted from the ease with which meats, vegetables and fruits may be obtained; to rapid transit from one extreme of the country to another; the advanced science of farming and hothouse growing, as well as the improved and advanced methods of putting up in cans or jars nearly all of the foodstuffs used by the people. By these means the daily menu of the people has been vastly extended, with a corresponding decrease in the consumption of bread. That this fact is true requires no proof, but is susceptible of verification by our own observation and in our own houses. There is no hard and fast rule in American jurisprudence as to the exact subject-matters amenable to State regulation on the ground that they are affected with a public interest. In the evolution of our civilization, and in the never-ending change of conditions, a business which to-day is in no respect whatever affected with a public interest and, therefore, on that ground alone, not subject to legislative control and regulation, may be so clearly affected with a public use ten years hence, by force of a change of conditions, that it may be confessedly a legitimate subject for such legislation and control. Again, a business which years ago, because of conditions then existing, was, as a matter of fact, affected with a public interest,

and was justly so held by the courts, under circumstances as they then prevailed, may to-day, under an entirely different state of business development, be so clearly a mere private calling, entirely unaffected with any public interest, in the true sense of that term, as to render any attempt at State regulation of that calling, *on that ground,* absolutely unjustifiable and absurd. The hard and fast rule does not apply to the subject-matter, but to the legal principles called into operation.

More convincing than any argument can possibly be, to prove the claim that the business of the baker is no longer affected with a public interest, or impressed with a public use, or devoted to a public use (as these phrases go), is the fact that not only in the United States, but also in England and on the Continent of Europe, legislation tending to fix the *price of bread has been universally abandoned for almost a century.* The only exception in this country which counsel has been able to trace is the old bread ordinance of New Orleans, an ordinance which, because of its provisions exempting expressly from its operation all *"bread made to order,"* is of necessity of rather limited effect. If the business of the baker were still a proper subject for governmental regulation of price, would it have happened that there would be not a single State in the Union, not a city in the United States (with the sole exception of New Orleans), which has not abandoned all effort to bring the price of bread under State or municipal control? There must be a reason for this complete turn in legislative policy, a turn which is equally pronounced in the State and municipal legislation of this country as it is in the State and municipal legislation of England, Germany and France. While changed conditions have brought vocations under the power of the State which heretofore were considered exempt, other changes in the conditions have operated to free the business of the baker from that State or municipal control and interference which up to the early or middle part of the last century was the universal rule, and which universal rule then obtaining

was the basis of some of the *obiter dicta* still to be found in later expressions of the court. Competition has proven, in this instance, to be a much more efficient factor in keeping the price of bread at a proper level than any State or municipal regulations could possibly do.

Except in the paternalistic tendency which had probably not entirely disappeared at the time of its passage, or the fact that the business of a baker partook of a public nature, or the other fact that the municipality desired to prevent competition, is it possible to justify the enactment of the ordinance?

The sale of bread either under or over the prescribed weight is not naturally wrong. Unless a price is fixed at which a given weight is to be sold, there can be no fraud, *and certainly, either with or without the fixing of the price, there can be no fraud in selling bread which is overweight.* By reason of the fact that bread is not now, if it ever was, impressed with the figures 1, 2 and 4, there is no representation made that it contains any particular or given weights, and there is consequently no fraud. A loaf of bread which may be of a weight between two set weights does not constitute a standard weight; but if it should do so, *no law which fixes the standards of weight attempts to limit the amount of the commodity so standardized which may be sold* or contracted for, *i. e.,* the law requires sixty pounds of wheat to the bushel, but a dealer in wheat may sell his wheat grain by grain if he and his customer so desire and contract. Bread is not capable of being standardized, because its exact weight, by reason of climatic, atmospheric and other conditions, cannot be controlled or regulated from time to time or even from hour to hour. If placed in a dry or warm place it loses weight, and if kept in a damp or wet place it gains; and it cannot be standardized, because, unlike any other commodity the standard weight of which is prescribed, not being commercially divisible, the amount or weight, as well as the brand, shape and quantity, can only be regulated by the public demand. The weight of the loaf indicates

nothing as to its quality, purity or nutritive properties. Neither the public health nor the health of the inmates of the almshouse for whose use the under or overweight bread is to be seized and forfeited can be affected or impaired *by reason of the weight* of the bread so seized and forfeited.

On none of these grounds, which are the usual grounds by which the exercise of the police power by the municipality is warranted, is this ordinance justified.

D

The Construction of the Ordinance

The ordinance prohibits the sale, offering for sale, as well as the mere possession of, loaf bread otherwise than in the *"three distinctive sizes or weights"* prescribed. These three sizes are: 1. *Not less than* 16 *nor more than* 18 *ounces* avoirdupois. 2. *Not less than* 32 *nor more than* 35 *ounces.* 3. *Not less than* 64 *nor more than* 68 *ounces.* The same "distinctive sizes or weights" are also prescribed for bread made of rye, bran or unbolted wheaten flour. Under the ordinance, a violation occurs by (Sec. 4) "offering to sell" bread in loaves "different in weight" * * * "from those prescribed," or (Sec. 5) "when varying from the weight" * * * "prescribed," or (Sec. 6) "shall not be made in conformity with the directions of this law." The penalty for these several offenses is (Sec. 4), "shall forfeit the same" (different in weight from that prescribed) "and pay a penalty of $2.00 for every loaf so offered for sale and for any loaf actually sold," or (Sec. 5) "seize" and "forfeit" (when varying from the weight prescribed), or (Sec. 6) "proceed against the person or persons so offending" (if not made in conformity with the directions) "agreeably to law." In prescribing the three distinctive sizes or weights, the legislative intent undoubtedly was to restrict bakers and venders of bread to those prescribed. The words "no less" and "no more" have an exact, positive and arbitrary meaning. No distinction is made between the offense of selling, offering to sell or possessing *underweight* and the

offense of selling, offering to sell or possessing *overweight* bread. In fact, in the entire ordinance there is no reference to the selling of loaves of bread *deficient* in weight. The penalties and forfeitures are the same for both offenses. Under a strict construction of the ordinance, no baker could make a contract, no matter how much to his advantage it might be, for the sale of bread in loaves of different weight, nor, under such construction, has any baker the right to have in his possession either under or overweight bread, no matter whether it be intended ultimately for sale outside the District or in the course of legitimate competition with a rival baker, and in the course of which competition one baker might regard it to his interest and the success of his business, to sell a greater loaf at a given price than does his competitor. By no forced or strained construction—because to so hold might result in a judicial restraint of trade or prevention of competition—can this Court so construe this ordinance as to make it good as to the minimum but bad as to the maximum weights prescribed. The two are so closely associated as to be impossible of separation. This law may have fitted conditions as they existed at the time of its passage, when bakers were probably few in number and competition between them not very keen, and it may have even been intended by the legislative body, after the principle enunciated by the Court in Mayor vs. Yuille, 3 Ala. 137, by prescribing exact weights to prevent one baker giving more bread than his competitor. At the time spoken of, their trade was doubtless confined to a comparatively restricted area, and from the fact that the ordinance makes the mere possession of under or overweight bread a violation of the ordinance, it may fairly be argued that the legislature intended to confine bakers and their trade to the corporation in which they were located. Probably, also, there were few grades of bread, and doubtless little, if any, demand for the commodity in weights other than prescribed. That these conditions do not now exist is within the common knowledge of all. If the old ordinances of the corporation of

Washington were examined, no cause for surprise would exist, because it had attempted to fix the *precise* weights over or under which bread could not be sold, for the reason that it had, and may still have (although not enforced), ordinances which prevented the sale in the markets of "less than a quarter of an animal" or "a whole hog," while another ordinance provided a penalty of $10 for the use of each weight "heavier than standard." Such an ordinance as this, if the business of a baker is to be considered a private business—and in view of what has been heretofore said it cannot be otherwise regarded—comes within certain rules of construction which have been laid down by our own Court of Appeals in several cases, viz.:

> "Statutes imposing special assessments or a license tax, or restriction upon business or the occupations of the people, or levying a tax upon them, are to be strictly construed, and any doubt in them is to be construed in favor of the citizen."
>
> Allman vs. D. C., 3 App. D. C. 8.
> Electric V. Co. vs. D. C., 19 D. C. App. 462.
> Lockwood vs. D. C., 24 App. D. C. 569.
> Wilson vs. D. C., 26 App. D. C. 110.
> D. C. vs. Chapman, 25 App. D. C. 95.

In the case of Daly vs. Macfarland, 28 App. D. C. 558, the Court, dealing with the powers of the municipality, said:

"A municipal corporation possesses and can exercise the following powers and no others: 1. Those granted in express words. 2. Those necessarily or fairly implied or incident to the powers expressly granted. 3. Those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of the power is resolved by the courts against the corporation and the power is denied." In the same case the Court used other language, which seems to counsel to be controlling in its logic of this

case, viz.: "Corporations under a general power to make by-laws cannot make a by-law ordaining a forfeiture of property, to warrant the doing of such a thing, the power must be plainly, if not indeed expressly, conferred by the legislature. Certainly such power will not be presumed to exist in statutes in restraint of the ordinary and legitimate avocations of life, avocations in which the mass of human toilers gain their livelihood and contribute to the welfare and happiness of society. Such regulations can only be justified on the score of public welfare and safety, and such power cannot be presumed, but must be clearly expressed. The constitutional guarantees of the liberty and property of the individual undoubtedly include and protect him in the exercise of his right to earn his living by following a lawful calling, and the right is subject only to a reasonable control."

This ordinance not only violates every principle enunciated by the Court in the Daly case, but many others as well.

With respect to the weights, penalties and forfeitures prescribed, the ordinance is clear, unambiguous and unequivocal, and there is no room left for construction. The language employed is clear and admits of but one meaning. The municipal legislature meant what it has plainly expressed, and this meaning cannot be changed by construction. The plain and sound principle is to declare *ita lex scripta est,* although as so understood the enactment leads to absurd and mischievous results, or contravenes public policy.

Holden vs. U. S., 24 D. C. App. 318.
Stanton vs. City, 154 Ill. 23, 26.
I. C. R. R. Co. vs. City, 169 Ill. 329, 333.
St. L. & C. Ry. Co. vs. P. T. Co., 173 Ill. 508, 528.

It is a doctrine as old as the common law itself, that the intention of the legislature must be sought in the law itself, and it is only where the words are of doubtful and

ambiguous meaning that the provisions of construction or interpretation begins. It has always been considered a primary rule in the interpretation of laws that the law is to receive that meaning which the ordinary reading of its language warrants.

Courts are not to inquire as to the motive of the legislature, nor to depart from a meaning clearly conveyed in unambiguous language, because the statute, as literally understood, appears to lead to unwise consequences.

Holden vs. U. S., *ib.*

Frye vs. C., B. & Q. R. R. Co., 73 Ill. 403.

Applying these rules of construction to the ordinance under consideration, there can be no doubt that the ordinance makes it unlawful for anybody in the city of Washington (and if the ordinance applies, in the District of Columbia) to sell, offer for sale or have in possession loaf bread of any kind or quality in weights other than those prescribed. If the ordinance is valid, the consumer cannot contract for bread in sizes such as his particular exigencies may require, if those sizes do not correspond in weight with the prescribed weight. In order to make a sale or the possession of a loaf of bread lawful under the terms of this ordinance, the loaf must be of one of the *distinctive* weights prescribed, *no more, no less.*

That this must be the correct construction of the ordinance is apparent beyond peradventure or doubt: (1) Because of the unambiguous and unequivocal language used. (2) Because the ordinance (Appendix M) which was repealed by this enactment *expressly permitted loaf bread to be sold in loaves of any weight, provided it was sold by weight in avoirdupois pounds and ounces and weighed at the time of sale.* No such provision is in the present ordinance, and the entire language is so definite as to clearly negative any construction which would permit, under any circumstances, no matter if the same was honestly labeled or contracted for, loaf bread to be sold in any weights other than those prescribed. On the question of

the true construction of this ordinance, it must therefore be held that the ordinance means what it says—no more, no less—and upon that construction it must stand or fall. If the maxim *"ita lex scripta est"* can have any application in any case, the plain, concise, clear, unambiguous and unequivocal weight limitations of the ordinance should fall under its rule.

IV

The Ordinance is Unreasonable

It is unreasonable because it arbitrarily and unnecessarily interferes with the pursuit of an ordinary calling and with the right of contract.

City of Buffalo vs. Collins Baking Co., 39 Hun. (App. Div. N. Y. S. C.) 432.
Lochner vs. N. Y., 198 U. S. 45, 64.
People vs. Steele, 231 Ill. 340.
Off vs. Morehead, 235 Ill. 40.
Millett vs. People, 117 Ill. 294.
Frover vs. People, 141 Ill. 171.
Ramsey vs. People, 142 Ill. 380.
Brauville Coal Co. vs. People, 147 Ill. 66.
Ritchie vs. People, 155 Ill. 98.
Frost vs. City of Chicago, 178 Ill. 250.
Ruhstrat vs. People, 185 Ill. 133.
Bailey vs. People, 190 Ill. 28.
Bissette vs. People, 193 Ill. 334.
Horwich vs. Walker Co., 205 Ill. 497.
Edin vs. People, 161 Ill. 296.
Starne vs. People, 222 Ill. 189.
Cooley's Com. Lim., 7th Ed., 874 *et seq.*
Lippman vs. People, 175 Ill. 101.
In re Jacobs, 98 N. Y. 98.
Harding vs. People, 160 Ill. 459.
Manowsky vs. Stephen, 233 Ill. 409.
Freund on Police Power, 1st Ed., 60, 61.
Chicago vs. Netcher, 183 Ill. 104.

It is also unreasonable and void because it has no real or substantial relation to the public health, safety, peace, morals or welfare, and is a palpable invasion of rights secured by the fundamental law.

Macfarland vs. W., A. & Mt. V. R. R. Co., 18 App. D. C. 456.
Lansburg vs. D. C., 11 App. D. C. 477.
Dupont vs. D. C., 20 App. D. C. 477.
B. & O. R. R. vs. D. C., 10 App. D. C. 111.
Campbell vs. D. C., 19 App. D. C. 131.

It certainly cannot be contended, at least in this day, that an ordinance which prevents the bakers or venders of bread from selling loaves of such weights, *whether under or over those prescribed,* as the exigencies of their trade may require, has any relation to the public health, safety, peace, morals or welfare, or that it can possibly be anything else than an invasion of rights secured by fundamental law.

We have already seen the extent of the power given by the charters to the corporation, and the various constructions placed thereon by the successive municipal legislatures; but can it be contended that the charters vested the powers as exercised in the present ordinance? If not, the ordinance must fail.

The rule was very fairly stated in an early case in the District:

"A municipal corporation has no power to restrain or prohibit any person from the full exercise of all his rights under the general law of the land, unless such power is *expressly* given it by the charter *or necessarily results* from some expressively given power."

Carey vs. Cor. of Wash., 5 Cr. C. C. 13.

V

The Ordinance is Unconstitutional and Void

The ordinance deprives the citizen, engaged in making or selling bread, of liberty and property, without due process

of law, and denies to him the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

City of Buffalo vs. Collins Baking Co., 39 Hun. (App. Div. N. Y. S. C.) 432.
Yick Wo vs. Hopkins, 118 U. S. 356.
Lochner vs. N. Y., 198 U. S. 45, 62.
Allegro vs. Louisiana, 165 U. S. 578.
Daly vs. Macfarland, *id.*

It deprives the citizen of two classes of property: First, the right to freely contract with his fellows for the sale of his commodity without undue restriction, and second, the ownership of his bread, because, forsooth, he may have made it *less or more* than the weight prescribed; for does the ordinance not declare (Sec. 4) "that any person offering to sell bread different in weights * * * from those prescribed in this Act, shall forfeit the same," and in the clause (Sec. 5) giving the clerks of the markets the right to inspect, weigh and seize all bread there offered for sale, when "varying from the weight * * * prescribed by this Act," does it not also provide that "all bread offered for sale contrary to the provisions of this Act shall be forfeited and sent to the almshouse for the use of the poor, except when its use will be pernicious to health, in which case it shall be destroyed"?

On the question whether a police regulation is unconstitutional because it is claimed to be an unreasonable, arbitrary and unnecessary interference with the rights of the citizen engaged in an ordinary calling, a stricter test will be applied to municipal ordinances than to statutes, unless the municipal ordinance in all its provisions is justified by an express charter power.

Yick Wo vs. Hopkins, 118 U. S. 356, 371.
Hawes vs. City, 158 Ill. 653.
City of Lake View vs. Tate, 130 Ill. 247.

Will vs. C. & N. W. Ry. Co., 193 Ill. 351, 356. " "
C. & A. R. R. Co. vs. City, 200 Ill. 314, 331.
1 Dillon, Mun. Corp., 40th Ed., Sec. 328.
Chief Justice RUSSELL in Atty. vs. Farrell, 18 Cox 321.

In considering the question of the constitutionality of the ordinance in respect of the contract rights of the citizen vouchsafed by the Federal Constitution, it is of no importance, in the light of the judicial policy now universally accepted by the State and Federal courts as correct, whether the ordinance is based on the claim that the business of the baker is quasi-public, and therefore affected with a public interest or devoted to a public use, or upon the claim that the ordinance is justified as a reasonable and necessary exercise of the ordinary police power of the State, for the purpose of circumventing fraud and imposition. We do not mention that branch of the police power which concerns itself with sanitary measures, because the sanitary features of this ordinance are not at issue in this case. In all the cases decided within the last ten years, the question of the reasonableness and necessity of the State interference with the contract right of the citizen was applied equally as well (although not in the same degree) to the cases where that interference was based upon the ground that it was justified by the public or quasi-public character of the business to which it relates as to such where it was attempted to be justified simply and merely as an ordinary police regulation under the well-known application of such regulations to the public health or the prevention of fraud.

The Supreme Court of Illinois has asserted the right to control the *proportionateness of means to end;* in other words, the right to apply the test of reasonableness very strongly when, in annulling an ordinance requiring a railroad company to keep flagmen at every crossing, it said that it would treat the question as if the city had all the powers

which the State has for the welfare of the people, implying that a similar statute would have been declared void for unreasonableness.

Toledo R. R. Co. vs. Jacksonville, 67 Ill. 37.
Freund on Police Power, 59.

"A statutory regulation provided for therein is frequently valid or the reverse, according as the fact may be, whether it is a reasonable or unreasonable exercise of legislative power over the subject matter involved, and in many cases, *questions of degree are the controlling ones* by which to determine the validity, or the reverse, of legislative action."

Wisconsin M. & P. R. R. Co. vs. Jacobson, 179 U. S. 287.

Even as to the rates of transportation companies, so completely public in their character as railroad corporations, the test of reasonableness has been applied.

Chicago M. & St. Co. R. R. vs. Tompkins, 176 U. S. 167.
Note to 44 L. Ed., U. S. Rep. 417.
Note 3 to page 871 of Cooley, Con. Lim., 7th Ed.

Conceding, therefore, for the sake of the argument merely, that the business of the baker is a business affected with a public interest, yet the question whether the provisions of the corporation ordinance prescribing the weight of loaf bread permitted to be made and sold by the bakers will stand or fall, depends, in a constitutional sense, upon the decision of the proposition, Is the regulation reasonable, or is it unreasonable, arbitrary or unnecessary, to accomplish the object sought to be obtained?

The test of reasonableness is applied with still *greater vigor* when an ordinance is under consideration, interfering with the contract right of the citizen, not because the subject-matter of the contract entered into in respect therewith

is affected with a public interest, but because the interference is sought to be justified as an exercise of the *ordinary* police power of the State, concerning the prevention of fraud, oppression, imposition or the protection of the public health in connection with a *private calling*. If any statutory or municipal enactment could deprive the citizen of the constitutional protection of his contract right, in connection with the exercise by him of an ordinary private calling in no way affected with a public interest, simply because the statutory or municipal enactment was made under the guise or pretense of the exercise of the ordinary police power of the State, and that the degree of reasonableness and necessity for the exercise of that power *were only* and solely *a matter of legislative discretion,* then the constitutional safeguards of the contract right of the citizen as vouchsafed by the State and Federal Constitutions might just as well be repealed. Such sacred rights of the individual in the pursuit of his happiness, *i. e.,* in the pursuit of his ordinary private calling, have not been permitted by the courts to be placed entirely at the mercy of arbitrary legislative discretion.

It may be contended by opposing counsel that this case is not within the provisions of the Fourteenth Amendment, because it had not been adopted at the time of the passage of the ordinance. If this contention be made, it is susceptible of several answers. In the first place, the amendment did not create anything new, it did not in any manner change fundamental law, and in addition to this the Fifth Amendment specifically provides that no person shall "be deprived of life, liberty or property without due process of law." The enactment of the Fourteenth Amendment simply had the effect of preventing the several States from doing what the Fifth Amendment prevented the Federal Government itself doing. The second answer to the question is that, even if the Fourteenth Amendment does not apply because the ordinance antedates the ratification of the amendment, and even if the Fifth Amendment be confined to the Federal

Government, and it be considered that, while it could not itself deprive the citizen of life, liberty and property, yet it could do the unheard-of thing of delegating to a territory over which it had exclusive legislative jurisdiction the right to do so, the question then again arises, *When did the ordinance become a law of the District of Columbia?* If it became such a law when the District was created a municipality in 1871, then the Fourteenth Amendment does apply, at least to that part of the District outside the corporate limits of the city of Washington. The spectacle, then, which would confront us, would be an ordinance constitutional in one part of the municipal territory, because ordained before the adoption of the Fourteenth Amendment, and unconstitutional in another part of the territory, because the Fourteenth Amendment did apply. Such a condition is not for a moment to be considered. In fact, the Act of February 21, 1871, in several of its sections indicates in plain terms that the constitution is to apply. Section 18 vests the legislative assembly with certain legislative powers *"consistent with the constitution"* and "subject to the restrictions and limitations of the 10th section of Article 1 of the constitution," while Section 34 specifically provides, *"And the constitution* and all the laws of the United States which are not locally inapplicable shall have the same force and effect within the District of Columbia as elsewhere in the United States." In view of these sections, can it for a moment be claimed that it was Congress' intention to extend to or re-enact for the District at large an ordinance which, *although possibly constitutional* at the time of its passage, had, by reason of the adoption of the Fourteenth Amendment, ceased to be constitutional? In providing (Sec. 40) for the continuance of the laws of Washington and Georgetown and of the Levy Court, Congress intended only to carry over consistent and constitutional laws.

The ordinance also violates that part of the Fifth Amendment which provides, "Nor shall private property be taken for public use without just compensation."

As has been heretofore said, the ordinance directs that under or overweight bread shall be forfeited and sent to the almshouse for the use of the poor. It seems to us that to so take property, particularly in the absence of express charter authority, would be to take it for public use just as much as it would if the law provided that a baker violating the weight provision of the ordinance should forfeit his real estate for some public use.

The ordinance, further, violates the Fourth Amendment, which provides "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized." Notwithstanding the specific nature of this amendment, Section 6 of the ordinance undertakes to vest police officers, whenever they shall deem it necessary, and without any warrant or with or without probable cause, and without any oath or affirmation, with the power to enter the bakehouses, stores and shops in which bread is sold, and overhaul the carts and other vehicles employed in carrying bread around; and in Section 7 of the ordinance, the baker or vender of bread who refuses to submit to such an unreasonable trespass shall be liable to a penalty, not because he actually possessed under or overweight bread, but because he refused to submit to the trespass.

The ordinance is also in violation of the Federal Constitution, because it is class legislation. It has been axiomatic in the jurisprudence of the United States that an enactment which deprives one class of persons of the right to acquire and enjoy property, or to contract with relation thereto, in the same manner as others under like conditions and circumstances are permitted to acquire and enjoy property, is not comprehended within the true meaning of the words "due process of law," and is prohibited by the provisions of the Federal Constitution. The most cursory

examination of the ordinance must be convincing that it is discriminatory in its character; for instance, it limits bakers and venders of "wheaten bread" "or bread made of rye flour or unbolted wheaten flour or bran bread" *to the three distinctive sizes or weights* prescribed, and does not permit the sale, offering for sale or even possession of bread in any other weights, nor does it permit a purchaser to waive the weight, while it specifically recognizes (Sec. 8) the fact that other kinds of bread are made and sold in positive terms, permits such other kinds of bread to be sold by weight in avoirdupois pounds and ounces, but expressly allows the process of weighing to be dispensed with.

> "Every one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of a free government."
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> Cooley Con. Lim. (6th Ed.) 481, 483.

This principle has been generally applied by the courts to attempted interference with the legitimate conduct of a business, and the laws held bad, because no similar restrictions were placed upon other business.

> "In looking through statistics regarding all trades and occupations, it may be true that *the trade of a baker does not appear to be as healthy as some other* trades, and is vastly more healthy than still others. To the common understanding, the trade of a baker has never been regarded as an unhealthy one. Very likely physicians would not recommend the exercise of that or any other trade as a remedy for ill health. Some occupations are more healthy than others, but we think there are none which might not come under the power of the legislature to supervise and control the hours of working therein, if the mere fact that the occupation is not absolutely and perfectly healthy is to confer that right upon the legislative department of the government. It

> might be safely affirmed that almost all occupations more or less affect the health. There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. * * * We do not believe in the soundness of the views which uphold this law. On the contrary, we think that such a law as this, although passed in the assumed exercise of the police power, and as relating to the public health, or the health of the employees named, is not within that power and is invalid."
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> Lochner vs. N. Y., 198 U. S. 45, 59, 60, 61.

If it is discriminatory legislation to attempt on such a score to regulate the hours of labor of one set of laborers when the hours of others are not also so regulated, it is also an unjust discrimination to say that bread shall not be sold in less or more than given weights, while meats, teas, coffees and all the other commodities may be sold in such quantities, large or small, as the dealer and consumer may agree upon, but it is a doubly unjust discrimination that limits one class of bakers or venders of bread to exact weights, under or beyond which they cannot go, while another class of bakers or venders of bread may sell by the weight of the article, a process, too, which the ordinance provides *"shall not be obligatory."*

Now what is the substantial difference or distinction between the foodstuffs of bread and other solid foodstuffs, with reference to the reasonable necessity of requiring it to be sold in prescribed weights only, and not of any of the others, under the exercise of the branch of police power concerning itself with the prevention of fraud and imposition? Bread is not sold by weight. A great many of the other foodstuffs are. Bread is not labelled with its weight, nor does it now, if it ever did, as has been stated, bear the impress of the figures mentioned in Sec. 2 of the ordinance, nor is there now any pretense of weighing or selling by weight, rolls and cakes, or the other kinds of bread mentioned in Sec. 8 of the ordinance. Bread is sold by the

loaf, and generally by the brand of each customer's favorite baker. Sold, as it were, in its original package—the loaf itself forming the package.

Irrespective of the constitutional objections, the ordinance is void because it is unreasonable and in restraint of trade. Construing this law strictly and giving to language its well-known meaning, and particularly giving to the words "not more than 18 ounces" and "nor more than 35 ounces" and "nor more than 68 ounces," the only meaning such words can possibly bear, words that fix a superlative, a maximum and limit beyond which the dealer cannot go, the question arises, can a baker or vender of bread in the course of legitimate competition, to induce and increase his trade, in or out of the District of Columbia, sell or offer to prospective customers, bread of weight in excess of the maximums prescribed? The answer is decidedly in the negative.

The Adjudications Upon American Bread Legislation

The published reports of decisions by American courts contains only five bread cases, and they are

Guillotte vs. City of New Orleans, 12 La. Ann. 432.
Mayor vs. Yuille, 3 Ala. 137.
Paige vs. Fazackerly, 36 Barbour (N. Y.) 392.
City of Buffalo vs. Collins Baking Co., 39 Hun (N. Y.) 432.
People vs. Wagner, 86 Mich. 594.

These are *all* the cases that the diligence of counsel has been able to find. We will now proceed to take them up and discuss them seriatim.

The Louisiana Case

Guillotte vs. City, 12 La. Ann. 432.

In that case, decided by the Supreme Court of Louisiana in 1857, the Court passed upon an early ordinance of

the city enacted at the beginning of that century. The ordinance was a regular old-fashioned bread assize ordinance, and we print its text in full in the appendix to this brief. It should be remarked, at the outset, that the Constitution of the State of Louisiana, then in force contained *no* provisions similar to those embodied in the Fourteenth Amendment to the Constitution of the United States. It must also be remembered that that ordinance, by express provision, exempted from its operation *"bread made to order,"* and, therefore, could not be held to be violative of the right of contract, even if the Constitution of Louisiana then in force had been identical in its restrictions and safeguards with the Constitution of the United States.

The ordinance under consideration in that case was based upon the old Louisiana statutes of 1807 and 1814, giving the municipality the express power not only to regulate the price of *baker's bread,* but also of *butcher's meat,* as well as upon the statutes of 1816, conferring upon the municipality the power to

> "regulate everything which relates to *bakers, butchers,* * * * horse drivers, water carriers, and slaves employed as *day laborers,* to fix the *salaries* of said * * * horse drivers, water carriers and *day laborers.*"

The Court will now see at once that the theories of that case reach way back into a time when it was assumed that the State was, and had a right to be the *Paterfamilias* of the people.

We consider it due to the Court to point out the remarkable view of the Louisiana Court concerning the right of the citizen to follow a private vocation. We quote from page 435:

> "Now, when the law giver says to the baker, 'you shall not make and sell bread within certain boundaries unless you limit your profits to a certain sum for each barrel of flour which you make into bread, and unless you conform to certain regulations as to the size of the

> loaves, the places and times of sale' the obligations of no contract has been impaired, for none has been entered into; no vested right has been taken away, for *no man has a vested right (unless the same be expressly granted by a special act of the legislature) to furnish a certain portion of the population with bread,* and no tax has been levied upon the baker, for no part of the price of the bread goes into the public treasury, and *it* is entirely optional with him whether he will sell his flour or make it into bread, or pursue some other vocation."

The Court will, of course, be very much impressed as to the authority and weight of a case in which it is held that no man has a vested right to carry on the business of a baker *unless the same be expressly granted by a special act of the legislature.*

But the ordinance itself, under consideration by the Court, has all the virtues of a well considered assize ordinance. It had proper regard for the relative effect upon each other of the elements of price and weight and quality and the cost of raw material, and provides a frequent adjustment of weights in accordance with the fluctuations of the market.

The Alabama Case

Mayor vs. Yuille, 3 Ala. 137

The ordinance under consideration in that case was passed January 28, 1826, almost a century ago. This ordinance like the New Orleans ordinance, was a regular old-fashioned bread assize ordinance. The price of bread was taken as the standard, and weights and quality adjusted in accordance with the fluctuations of the market. The case turned upon the question whether the business of the baker in those days, and in that community (Mobile in 1826) was affected with a public interest, and, in line with the old English bread legislation on the subject, made at times and under conditions radically different from those of the present day, the Court came to the conclusion that it was. The

reasoning of the Court, however, in coming to the conclusion, is of unusual interest. We quote from page 141:

> "Where a great number of persons are collected together in a town or city, a regular supply of wholesome bread is a matter of utmost importance; and whatever doubts may have been thrown over the question by the theories of political economists, it would seem that experience has shown that this great end is better secured by licensing a sufficient number of bakers, and by an assize of bread, than by leaving it to the voluntary acts of individuals. *By this means a constant supply is obtained without fluctuation in quantity which would be the inevitable result of throwing the trade entirely open, and the consequent rise in price, when from accident or design a sufficient supply was not produced.* The interest of the city in always having an abundant supply will be a sufficient guaranty against any abuse of the right to regulate the weight, the consequence of which would be to drive the baker from the trade."

To sustain a bread ordinance on the ground that it is a proper means for a constant supply of bread without that fluctuation in quantity which would be the inevitable result of throwing the trade entirely open, is a line of reasoning of considerable, but merely historical interest.

The ordinance in question has, of course, long since been repealed, and, as we will show in the historical review of bread legislation in the United States, the city of Mobile has long since freed itself from the bonds of such antiquated enactments.

The New York Cases

(*a*) Paige vs. Fazackerly, 36 Barbour 392

The decision in this case is *not* a decision by a court of last resort. It is tantamount to what would be a Circuit Court holding. But, irrespective of that circumstance, on the trial of the case in that court of ordinary jurisdiction, it became apparent that the contention concerning the

unconstitutionality of the ordinance *was practically abandoned.* We quote from page 394:

> "It is safe to say that at the trial none of these objections were properly taken, except the last (the constitutional objection), *which is now not strenuously urged.* There is no doubt that a city ordinance regulating the weight of bread is a valid police regulation. (Laws of 1842, Ch. 275, Sec. 29; Tanner vs. Trustees of Albion, 5 Hill 121; Mayor of New York vs. Williams, 15 N. Y. Rep. 502)."

We are at a complete loss to understand why the learned Judge writing the opinion should have based the decision upon the cases in 5 Hill and 15 New York cited by him. Neither of these cases has the slightest bearing upon the constitutional question involved. In Tanner vs. Trustees, 5 Hill 121, the only questions under consideration were whether a municipality had the power to make a by-law prohibiting the keeping of bowling alleys for hire, under its charter power relating to nuisances, and whether the legislature had the right to delegate to a municipal corporation the power to pass by-laws for local objects. In Mayor vs. Williams, 15 N. Y. 502, the only question was whether an ordinance requiring hoistways in stores and other buildings to be enclosed by a railing, and closed by a trap door upon the completion of the business of each day, was a reasonable police regulation.

(*b*) City of Buffalo vs. Collins Baking Co., 39 Hun. (N. Y.) 432

The decision in this case was made by the *Appellate Division* of the New York Supreme Court, and involved directly the constitutionality of an ordinance of the City of Buffalo requiring loaf bread to be made in loaves of a certain specified weight only. The Court, in a well reasoned opinion, concurred in by all the Judges, decided that an ordinance of that kind was clearly void, and it arrived at its conclusion upon the following reasoning:

"There has been much controversy as to the extent to which the local law-making power can go in restraining and interfering with trade in the exercise of the police power vested in it, but it is now quite well settled that the restriction or prescription sought to be made *must be reasonable* in protecting 'the lives, health, comfort and property of its citizens.' (City of Rochester vs. West, 29 App. Dov. 125; Dillon, Mun. Corp. 3rd Ed.), Secs. 319, 320.)

"*The right of the individual to engage in any lawful calling is guaranteed to him, and any oppressive exaction, or any unreasonable restraint upon the utmost liberty of business growth and advancement, is in contravention of this fundamental law of the land.* (Ford vs. Standard Oil Co., 32 App. Div. 596; 600 *et seq;* People vs. Gillson, 109 N. Y. 389, 398 *et seq;* Slaughterhouse Cases, 16 Wall 36, 106; People vs. Marz, 99 N. Y. 377.)

"To quote from the opinion of Judge Rapallo in the case last cited (at p. 386): 'These constitutional safeguards have been so thoroughly discussed in recent cases that it would be superfluous to do more than refer to the conclusions which have been reached, bearing upon the question now under consideration. Among these no proposition is now more firmly settled than that it is one of the fundamental rights and privileges of every American citizen to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit.' And from Judge Peckham in People vs. Gillson (at p. 399): 'Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways to live and work where he will, to earn his livelihood in any lawful calling and to pursue any lawful trade or avocation.' And from Judge Field in the Slaughterhouse Cases (at p. 87): 'Under the pretense of prescribing a police regulation the State cannot be permitted to encroach upon any of the just rights of the citizen which the constitution intended to secure against abridgement.'

"The difficulty is in a particular case, to determine where the ordinance in the restraint of trade transcends

the power of the legislative body by its infringement upon the rights of the individual. If the purpose to be obtained is for the public health or comfort, or the public weal generally, then the rights of the individual must yield to the common good. *In this case no good to the public is apparent. Bread of the same composition, weighing one pound, is equally as wholesome as a loaf half a pound larger.* There is no advantage to the public on the score of economy as the price is ratably the same. There is no pretense of any attempt to cheat in the weight, and no question of inspection is involved. *There is a demand for loaves of bread of one pound weight. The sales of this size made by defendant have averaged about 200 loaves each day. It is, therefore, engaged in a proper business, supplying the needs of the people daily at a confessedly moderate charge and without any criticism as to the quality of the food furnished.* There is no necessity for the common council to prohibit it from carrying on this trade; its endeavor to do so is an unreasonable prescription of a legitimate calling. Enforcement of the ordinance will tend to lessen the value of the property invested in the enterprise, to diminish the number of its employees and to decrease its sales, and with no benefit accruing to the people of the City of Buffalo."

The Michigan Case

People vs. Wagner, 86 Mich. 594

To arrive at an intelligent understanding of this decision the ordinance passed upon by the Court should be carefully analyzed and compared with the Washington ordinance.

The Detroit ordinance applies in express terms only *to professional bakers,* and requires them to be licensed. The Washington ordinance expressly *refers* not only to professional bakers, but *to anybody who may make* or sell loaf *bread* and requires no license.

The Detroit ordinance requires loaf bread to be made in loaves of definite weights, but prohibits only the sale of loaves which may be *deficient* in weight, and permits the

sale of loaves which may be overweight. The Washington ordinance not only prescribed definite weights, but prohibits the making, sale or possession of any bread in loaves not of the *exact* weights required, whether under weight or over weight.

In view of the provisions of the Detroit ordinance above pointed out, and specially commented upon by that Court in its opinion, and in view of the facts expressly assumed by the Court, concerning the weights *invariably* used in the business transactions between the baker and his customers in that city, the Court upheld the ordinance as a constitutional exercise by the State, through the municipality of Detroit, of its police power, in protecting the consumers of bread from frauds which may be attempted by the bakers in the matter of the weight of the loaf.

It is also apparent that the only theory upon which the Court could justify the constitutionality of the Detroit ordinance, was that in so far as the ordinance *merely accepted the same weights invariably used* in the bakery trade of Detroit, and prescribed that no loaves of deficient weight should be sold, it was a reasonable exercise of the *police power to guard against fraudulent weights.*

That the Court construed the ordinance not to prohibit the sale of loaves weighing *more* than the prescribed weights, is apparent from this language of the Court, on page 599:

> "It (the ordinance) *does not prohibit* the sale of bread by weight, *if it overruns,* as it is claimed it sometimes does, nor does it prohibit the exacion of *an increased* price by reason of the additional weight."

The decision in no wise justifies the ordinance upon the claim that the business of the baker *is affected with a public interest,* and for that reason alone, subject to State regulation and control.

The Michigan Court relies entirely, for the support of its conclusions, upon the Massachusetts case, in which

(Wheeler vs. Russell, 17 Mass. 258, and Eaton vs. Kegan, 114 Mass. 433), it was held that no recovery could be had for the price and value of certain articles which, under the statutes of Massachusetts, were required to be sold either in certain dimensions (as in the case of shingles), or by certain measurements (as in the case of oats). The Massachusetts statute on Weights and Measures does not *exempt* from its provisions, in the case of shingles and oats, etc., *special contracts* based upon other dimensions or measurements than those prescribed in the law. In that respect the Massachusetts Weights and Measures Act is diametrically opposed in its policy, not only to our Weights and Measures Act, but also to the Weights and Measures Act of Michigan. In this district that statute would undoubtedly be held to be unconstitutional.

They are permitted to stand in Massachusetts for the reason only that the Constitution of Massachusetts gives to the legislature of that State more plenary power than that of the Constitution of most, if not all, of the other States.

In further support of its position the Michigan Court relied upon a citation taken from Tiedeman on the Limitations of Police Power, when it quotes:

> "The State may institute any reasonable preventive remedy when the frequency of the frauds, or the difficulty experienced by individuals in circumventing them, is so great that no other means will prove efficacious. Tied. Lim. Section 89, p. 208."

It is to be regretted that the learned Judge completely overlooked that the same author, in the *same* section of the *same edition* of the *same work,* uses this language:

> "It is permissible for a statutory regulation to provide for standard weights and measures, and to compel their use, *when the parties have not agreed upon the use of others,* but it cannot be reasonable to prohibit the use of any other mode of measurement. It *is an excessive exercise of police* power when the law com-

> pels one to make use of the means provided for his own protection against fraud."
>
> Tiedeman's Limitations of Police Power (1st Ed.), Sec. 89.

In this connection it deserves at least passing notice that that part of the section taken from Tiedeman on the Limitations of Police Power, above quoted, and not noticed by the learned Judge, in deciding the Michigan bread case, has been adopted by the Supreme Court of Illinois as the true rule in a late case.

> Horwich vs. Walker-Gordon Laboratory, 205 Ill. 497, 506.

The Michigan Court was not very fortunate in answering the objections that, as in Detroit bread is sold at prices of five cents, and multiples thereof, the ordinance, as a matter of fact, amounts to a price regulation when it says, on page 598:

> "This difficulty * * * has to be met in the sale of a pound of nails, of a dozen buttons or of a paper of needles, as well as in the sale of a loaf of bread."

The sale of only one pound of nails at a time is, as everybody knows, a rare occurrence in the hardware trade, in comparison with the sales of more than one pound; that is, of two, three, five, twenty, a hundred pounds at a time, while the sale of one loaf of bread at a time is, as far as the great bulk of the households are concerned, the rule, and the sale of more than one loaf of bread to the same private customer, at a time, of comparatively rare occurrence. The comparison of the sale of a loaf of bread with the sale of a dozen buttons and of a paper of needles is still more unfortunate, because according to the fluctuations in the price and cost of production of either of those articles, more or less buttons or needles could be put into the package, even if it were true that all kinds of buttons and all kinds of

needles are sold for five cents a package, or multiples thereof, which everybody knows is not the case. In the case of buttons, particularly, the comparison seems to be quite unjustified.

The weight of the Michigan case is an extremely negligible quantity in its bearing upon the issues here under consideration.

The ordinance upheld in People vs. Wagner is no longer in force. The exigencies of the bakery business, as carried on in Detroit, and the changed conditions surrounding that business in its relation to the consumer, brought about an amendment of that section of the ordinance which prescribed bread to be sold in certain weights only, so that *now bread can be sold in Detroit in loaves of any weight,* provided the weight of the loaf is indicated upon the label.

It is respectfully submitted that the judgment of the lower Court should be affirmed.

ALEXANDER H. BELL
For the Defendant in Error

APPENDIX A

Opinion of Justice Kimball

In the argument on the motion filed in this case, there have been quite a large number of very important questions raised, which I do not, in the view I take of the ordinance, think it necessary for me to decide.

One of the most important of those questions raised by the defendant's attorney was that this ordinance when enacted applied only to part of the District of Columbia included within the territory known as the city of Washington, and that Congress when it abolished said city as a corporation and created a new corporation known as the District of Columbia, covering the whole of the territory of the District, did not extend the ordinances of the city of Washington to cover the whole of the new municipality, and that said ordinance thereby became void or obsolete, as it subjected a baker residing in the city of Washington to a penalty, and did not apply to his competitors residing in the old County of Washington, the latter having no restrictions upon the size of the loaves he might bake, and the baker in the old city of Washington being subjected to a penalty unless he baked loaves of the specified weight named in the ordinance.

It is not necessary under my view of thise case to decide this question.

Another question which it is not necessary for me to decide is as to the effect upon this ordinance of the power of search contained therein.

This law was passed on January 7, 1858, and, as far as has been disclosed here, only a part of it has ever been enforced. The part of it that has been enforced from time to time is a portion of Section 2; but that portion of Section 2 which requires that the figures "1," "2" and "4" be stamped upon each loaf never has been enforced. Neither

has any part of Section 8, which provides that all other bread, buns, rolls, crackers, biscuits, cakes or baked dough not before described, shall be sold by actual weight in avoirdupois pounds and ounces.

It was stated in the argument, and the Court believes it to be a fact, that the customary way of selling buns and cakes has, for all these years, been by the dozen, and not by the pound. There has been no attempt up to the present time to enforce the selling of these articles by weight, through prosecutions.

The claim was made in this argument that the section prescribing the size of loaves is a non-constitutional provision, as it interferes with the right of contract.

A Court of minor jurisdiction is loath to declare any ordinance or law void for unconstitutionality, and I, sitting in this Court, have always avoided making such a decision unless the law was so clearly unconstitutional that I could not sustain it. Had the present law, in Section 2, prescribed only the minimum amount or size of the bread, and not fixed a minimum above which the loaves could be baked, with a provision that bread sold by the loaf should not contain less than a certain specified number of ounces, I should be very loath to declare the law unconstitutional; but should have remitted the remedy of the defendant to an appeal to the higher Court. But that is not the provision of the ordinance in question. It not only prescribes that the baker shall not bake in any other sizes than those named, but has a maximum beyond which no loaf can be made. In that, I think, as I have indicated during the argument of the case, the law is fatally defective. It is, in my judgment, a clear interference with the right of contract. A baker certainly has the right under his constitutional power over his own property to give a man, if he so desires, three or four ounces more than the regulation size loaf. To attempt to say that while a baker may not make a loaf of less than sixteen ounces, that he shall not, under any circumstances, make or sell a loaf of over eighteen ounces, is, as it seems

to me, a clear interference with the right of property which the Constitution of the United States guarantees to every citizen.

Upon this principle, without going into any of the other grounds which were urged in the argument of the case, and although I regret very much to interfere with a law which has been on the statute book for so long a period, I feel it my duty to hold that the law is void.

Note: This opinion was taken down stenographically and revised and corrected by Judge Kimball.

APPENDIX B

Chapter 10

An Act Regulating The Quality And Weight of Bread

Be it enacted by the Board of Aldermen and Board of Common Council of the City of Washington, That from and after the 15th day of January 1858, it shall not be lawful for any person or persons to sell or offer for sale within the City of Washington, any loaf bread manufactured of wheaten flour, whether that known as bakers' wheaten bread or any other (except bread made of unbolted wheaten flour or bran bread hereinafter provided for), unless the same shall be composed of the best quality of fine, sweet superfine wheaten flour, free from all adulterating ingredients and from any improper or unwholesome mixture whatever.

Sec. 2. And be it enacted, That the loaves of wheaten bread sold in this city shall be of three distinctive sizes or weights, to-wit: the first to weigh not less than 16 nor more than 18 ounces avoirdupois; the second to weigh not less than 32 nor more than 35 ounces avoirdupois and the third to weigh not less than 64 nor more than 68 ounces avoirdupois weight; and each loaf of bread shall have legibily stamped or impressed thereon the weight of the bread in figures, one, two and four, the figure 1 to be stamped on the loaf of bread of the first weight, the figure 2 on the second weight and the figure 4 on the third weight.

Sec. 3. And be it enacted, That loaves of bread made of rye flour and of bread made of unbolted wheaten flour or bran bread, shall when offered for sale be of the distinctive sizes or weights as are prescribed for loaves of wheaten bread and shall also be free from any adulterating or unwholesome ingredients whatever.

Sec. 4. And be it enacted, That any person or persons offering to sell bread in loaves different in weight or

quality from those prescribed in this Act, shall forfeit the same and shall pay a penalty of two dollars for every loaf so offered for sale and for every loaf actually sold; the information to be lodged with a police magistrate within twenty-four hours from the time the bread is so offered for sale or sold; one-half of said penalty to be given to the informer, provided, however, that in rendering his decision the magistrate shall be bound to make a reasonable allowance for the staleness of the bread or loss of weight by drying.

Sec. 5. And be it enacted, That it shall be the duty of the several clerks of the markets in this city to inspect all bread offered for sale in their respective markets, to weigh it when they think proper and to seize the same when varying from the weight and quality prescribed by this Act and on proof before a police magistrate, all bread offered for sale contrary to the provisions of this act shall be forfeited and sent to the almshouse for the use of the poor, except when its use will be pernicious to health, in which case it shall be destroyed.

Sec. 6. And be it enacted, That it shall be the duty of each and all of the police officers whenever they shall deem it necessary to enter the bake houses, stores and shops in which bread is sold, in their respective wards and also to overhaul the carts and other vehicles employed in carrying bread around to houses and to examine and weigh the bread found therein and if such bread or any part thereof shall not be made in conformity with the directions of this law, said police officers or other of them, shall proceed against the person or persons so offending agreeably to law.

Sec. 7. And be it enacted, That if any baker or vendor of bread by himself or herself or by his or her agent, shall refuse to permit the bread in his or her possession to be examined and weighed at a reasonable hour by any police officer or clerk of market or shall conceal the same from the said police officer or clerk, who desires to examine and

weigh the same, he or she shall forfeit and pay not less than twenty dollars nor more than thirty dollars for every day's refusal.

Sec. 8. And be it enacted, That all bread, buns, rolls, crackers, biscuits, cakes or baked dough not hereinbefore described or provided for shall when sold be sold by actual weight in avoirdupois pounds and ounces, such weight to be made by the vendor at the time of sale by means of scales approved by the Sealer of Weights and Measures, and any person or persons who shall neglect or refuse to weigh in the manner prescribed, such bread, buns, rolls, crackers, biscuit, cake, or baked dough not provided for in the previous sections of this Act and to declare truly the weight of the same shall upon proof before a police magistrate of thus offending forfeit and pay for every such offense a fine of not less than two dollars nor more than five dollars; one-half to go to the informer and the other half to the city funds, provided, however, that the process of weighing shall not be obligatory when the purchaser or his or her agent, shall volunteer to dispense with the same.

Sec. 9. And be it enacted, That all Acts and parts of Acts inconsistent with this Act, be and the same are hereby repealed.

Approved January 7, 1858.
55 to 57 Council.
Sheahan's Digest, Appendix page 79.

Note:—What purports to be a copy of this Act is to be found in Webb's Digest, but it is materially different and as counsel has been unable to procure the original of this or any of the other acts recited, it is impossible to say how far they are correct.

APPENDIX C

An Ordinance In Relation To The Weight Of Bread

Be it ordained by the Board of Aldermen and Board of Common Council of the Corporation of Georgetown, That from and after the first day of January 1871, all bakers' bread sold or offered for sale within the limits of this Corporation shall weigh sixteen ounces to the single loaf and thirty-two ounces to the double loaf.

Sec. 2. And be it further ordained, That it shall be the duty of the Market Master to examine the bread offered for sale at least once in each and every month, and the person or persons offering bread of light weight shall be fined a sum of not less than five nor more than ten dollars for each and every offence; said fine to be collected in the usual manner.

Approved December 17, 1870.

APPENDIX D

An Act Regulating The Quality And Weight of Bread

Be it ordained, That an act of the corporation of the city of Washington, approved January 7, 1858, entitled "An Act regulating the quality of bread," be, and the same is hereby extended to the County of Washington, and all its provisos are hereby made applicable and binding upon the said county.

And be it further ordained, That the duties imposed upon the clerks of the several markets in the City of Washington shall be performed in the county by the superintendent of roads, whose duty it shall be to examine the bread offered for sale in said county, and enforce the penalties of the act in cases of violation thereof.

Passed January 16, 1868.

APPENDIX E

Ordinances passed by the Levy Court of the County of Washington, District of Columbia.

From May, 1863, to December 19, 1870.

Made pursuant to Act of March 3, 1863, Vol. 12, p. 799.

Edited by W. Birney, Attorney D. C.

An Ordinance to abate nuisances in the County of Washington, District of Columbia:

In conformity with the Act of Congress, approved March 3, 1863, entitled "An Act to define the powers and duties of the Levy Courts of the County of Washington, District of Columbia, in regard to roads and for other purposes.

Sec. 1. Be it ordained by the Levy Court of the County of Washington, District of Columbia, that, etc.

Passed May 11, 1863.

N. SARGENT, *President.*

Test: N. CALLAN, *Clerk.*

An Act for the preservation and protection of insectivorous birds and other game within the County of Washington, D. C.

In conformity with the Act of Congress, approved March 3, 1863 etc. etc.

Sec. 1. Be it ordained by, etc. * * * * * * *

Passed May 11, 1863.

N. SARGENT, *President of Levy Court.*

Test: N. CALLAN, *Clerk.*

An Ordinance to prevent bathing and swimming in any part of the Potomac or Anacostia Rivers in the County of Washington, D. C.

Be it ordained by, etc. * * * *

Passed 13th June, 1864.

N. SARGENT, *President of Levy Court.*

Test: N. CALLAN, *Clerk.*

An Ordinance to prevent committing trespass upon and injuries to the public roads in the County of Washington, D. C.

In conformity with the Act of Congress, approved March 3, 1863.

Sec. 1. Be it ordained by, etc.

Passed 11th July, 1864.

An Ordinance to prevent fast driving in the County of Washington, D. C.

In conformity with the Act of Congress, approved March 3, 1863, etc.

Be it ordained by, etc.

Passed Aug. 8, 1864.

NATHAN SARGENT,
President of Levy Court.

Test: NICHOLAS CALLAN, *Clerk.*

An Ordinance to prevent and prohibit to make use of profane or indecent language in or on or near any public road or highway in the County of Washington, D. C. and for other purposes.

Sec. 1. Be it ordained by, etc.

Passed Dec. 19, 1864.

N. SARGENT, *President of Levy Court.*

Test: NICHOLAS CALLAN, *Clerk.*

An Ordinance relating to keepers of hotels, taverns, ordinaries, eating houses, and wholesale and retail dealers, hawkers, peddlers and auctioneers, in the County of Washington, D. C.

Whereas, by an Act of Congress, entitled "An Act to authorize the Levy Court to issue
In the District of Columbia, approved 12th June, 1860, the Levy Court of the County of Washington, D. C. was empowered, etc.

Be it ordained by the Levy Court of the County of Washington in the District of Columbia as follows:

Sec. 1.

Passed January 1865.

NATHAN SARGENT.
Pres. Levy Court Washington County.
District of Columbia.

Test: NICHOLAS CALLAN, *Clerk.*

An Ordinance in relation to race courses and other purposes.

Be it ordained by, etc.

Passed April 10, 1865.

N. SARGENT, *President of the Levy Court.*

Test: NICHOLAS CALLAN, *Clerk.*

An Ordinance respecting the observance of the Sabbath.

Be it ordained by, etc.

Passed April 10, 1865.

N. SARGENT, *President Levy Court.*

Test: NICHOLAS CALLAN, *Clerk.*

An Ordinance in relation to omnibuses, carts and wagons.

Be it ordained by, etc.

Passed July 30, 1865.

An Ordinance amending the Ordinance entitled "An Ordinance relating to keepers of hotels, taverns and ordinaries."

Passed January, 1865.

Be it ordained by etc.

Passed October 12, 1865.

An Act imposing a tax on insurance companies.

Be it ordained, That it shall not be lawful for any life, fire or other insurance company, etc.

Passed October 1, 1866.

An Ordinance creating the office of Sealer of Weights and Measures.

Sec. 1. Be it ordained by, etc.

Passed October 6, 1866.

An Ordinance in relation to . . . . .

Be it ordained by, etc.

Passed April 1, 1867.

THOMAS BLAGDON,
Pres't Levy Court pro tem.

Test: NICHOLAS CALLAN,
Clerk Levy Court, Washington County, D. C.

An Act regulating the quality and weight of bread.

Be it ordained, That an Act of the corporation of the City of Washington, approved January 7, 1858, entitled

"An Act regulating the quality of bread," be and the same is hereby extended to the County of Washington, and all its provisions are hereby made applicable and binding upon the said county.

And be it further ordained, That the duties imposed upon the clerks of the several markets in the city of Washington, shall be performed in the county by the superintendent of roads, whose duty it shall be to examine the bread offered for sale in said county, and enforce the penalties of the Act in case of violations thereof.

Passed January 16, 1868.

An Ordinance relating to . . . .

Be it ordained by, etc.

Passed April 6, 1868.

J. A. MAGRUDER, *President.*

Test: N. CALLAN, *Clerk.*

An Ordinance for the prevention of nuisances.

Be it enacted by, etc.

Passed May 4th, 1868.

J. A. MAGRUDER, *President.*

NICHOLAS CALLAN, *Clerk.*

An Ordinance regulating surveys, fees etc. in the County of Washington.

Be it enacted by, etc.

Passed 4th May, 1868.

J. A. MAGRUDER.

NICHOLAS CALLAN, *Clerk.*

An Ordinance in relation to hackney coaches, omnibuses and other vehicles, for conveyance of passengers within the County of Washington, D. C.

Sec. 1. Be it ordained by, etc.

Passed August 2, 1869.

C. H. NICHOLS, *President.*

NICHOLAS CALLAN, *Clerk.*

An Ordinance of the Levy Court of the County of Washington, D. C.

Be it ordained by, etc.

Passed July 11, 1870.

C. H. NICHOLS, *President.*

Test: NICHOLAS CALLAN, *Clerk.*

An Order regulating interments and for other purposes.

Be it ordained by, etc.

Passed December 19, 1870.

C. H. NICHOLS, *President.*

Test: N. CALLAN, *Clerk.*

APPENDIX F

An Act Regulating The Weight And Quality of Bread

Sec. 1. Be it enacted by the first and second chambers of the City Council of Washington, That from and after the first day of June next, all wheaten bread, made or offered for sale in the city of Washington, shall be made from inspected flour, either superfine, fine or middling, without any intermixture of the same, or the addition of Indian meal or flour from any other grain.

Sec. 2. And be it enacted, That no bread shall be exposed for sale, unless it be stamped with the initials of the maker's name and quality, and any bread offered for sale after the said first day of June without the above stamp shall be forfeited to the person to whom it is so offered for sale or to the trustees of the poor of the city of Washington for the use of said poor.

Sec. 3. And be it enacted, That the bread so offered for sale shall be made in single or double loaves to be so termed from their weights; the weight whereof shall be proportioned to the price of flour ascertain and published agreeably to the directions of this Act; the single or double loaves of bread of all qualities shall be of the same weights and regulated by the cash price of superfine flour agreeably to the following table:

Price of Superfine Flour per Barrel.	Weight of a Single Loaf.	Weight of a Double Loaf.
From 4 dolls to 4.50	31 ounces.	62 ounces.
" 4.50 dolls to 5.00	30 ounces.	60 ounces.
" 5.00 dolls to 5.50	27 ounces.	54 ounces.
" 5.50 dolls to 6.00	23 ounces.	46 ounces.
" 6.00 dolls to 6.50	22 ounces.	44 ounces.
" 6.50 dolls to 7.00	20 ounces.	40 ounces.
" 7.00 dolls to 7.50	19 ounces.	38 ounces.
" 7.50 dolls to 8.00	17 ounces.	34 ounces.
" 8.00 dolls to 8.50	16 ounces.	32 ounces.
" 8.50 dolls to 9.00	15 ounces.	30 ounces.
" 9.00 dolls to 9.50	14 ounces.	28 ounces.
" 9.50 dolls to 10.00.	13 ounces.	26 ounces.

and in that proportion as the value of flour increases.

Sec. 4. And be it enacted, That in the last week of every month the mayor or in his absence the register, shall from respectable merchants living in the County of Washington, ascertain the cash price of superfine flour, which he shall cause to be published in a city newspaper for the information of those concerned and the price so published shall be the guide and standard under which the weight of bread shall be regulated for the month succeeding, provided always, that upon any sudden rise in the cash price of superfine flour, it shall be lawful for the mayor, in manner aforesaid, to establish the standard weight of bread per week instead of per month, during the continuance of such rise of price and no longer.

Sec. 5. And be it enacted, That any person offering bread for sale of less weight that is prescribed by the third section of this Act, shall forfeit the same and also the sum of two dollars for every loaf so offered for sale; one-half to the person giving the information and the other to the corporation; the information to be lodged with a magistrate in twenty-four hours from the time the bread was so offered for sale, provided, however, that in giving his decision the magistrate shall be bound to make a reasonable allowance for the staleness of the bread or loss of weight by drying.

Sec. 6. And be it enacted, That if any bread be offered for sale in any of the markets of the city it shall be the duty of the Clerk thereof to take cognizance of the same and if found deficient in weight or quality, the bread forfeited shall by him be sent to the city poor house for the use of the poor and he shall prosecute for the fine before some magistrate residing in the city.

Approved April 17th, 1806.

First Laws District of Columbia, First to Fifteenth Common Council. 1802-1818.

APPENDIX G

An Act Supplementary to the Act entitled "An Act regulating the weight and quality of bread"

Sec. 1. Be it enacted by the first and second chambers of the City Council of Washington, That the duty heretofore required to be performed by the Mayor by the fourth section of the Act entitled "An Act regulating the weight and quality of bread" henceforth devolve on and shall be performed by the Register, anything in the said Act to the contrary notwithstanding.

Sec. 2. And be it enacted, That it shall be the duty of the police officers to enter the bake-houses, stores and shops in which such bread is sold in their respective districts, and also to examine the carriages employed in carrying bread about from house to house and to examine the bread found therein and if the same or any part thereof shall not be made in conformity with the directions of the said Act, he shall proceed against the person or persons so offending, agreeably to the directions of the aforesaid act.

Sec. 3. And be it enacted, That if any baker shall refuse at a reasonable hour to permit the bread in his possession to be examined and weighed by any police officer or shall conceal the same from the said police officer, when desiring to examine and weigh the same, he shall forfeit the sum of twenty dollars for every day's refusal, to be recovered before a Magistrate; one-half whereof shall go to the informer and the other to the City Treasurer for the use of the corporation.

Approved October 3, 1809.

First Laws District of Columbia, First to Fifteenth Common Council. 1802-1818.

APPENDIX H

Chapter 24

An Act amendatory of the Act entitled "An Act regulating the weight and quantity of bread"

Be it enacted by the Board of Aldermen and Board of Common Councilmen of the City of Washington, That from and after the passage of this Act the weight of bread shall be agreeably to the following table, viz:

PRICE OF SUPERFINE FLOUR PER BARREL.	WEIGHT OF A SINGLE LOAF.	WEIGHT OF A DOUBLE LOAF.
From $4.00 to $4.50.	27 ounces.	54 ounces.
" 4.50 to 5.00.	25 do	50 do
" 5.00 to 5.50	24 do	48 do
" 5.50 to 6.00	23 do	46 do
" 6.00 to 6.50.	22 do	44 do
" 6.50 to 7.00.	21 do	42 do
" 7.00 to 7.50	20 do	40 do
" 7.50 to 8.00	10 do	38 do
" 8.00 to 8.50.	18 do	36 do
" 8.50 to 9.00	17 do	34 do
" 9.00 to 9.50	16 do	32 do
" 9.50 to 10.00	15 do	30 do

Sec. 2. And be it enacted, That so much of the Act, to which this is amendatory, as is contrary to the provisions of this Act, be, and the same is hereby repealed, together with the second section of the said act requiring the initials of the maker's name to be stamped on his bread.

Approved December 23rd 1814.

First Laws District of Columbia, First to Fifteenth Common Council. 1802-1818.

Note: So far as can be traced the corporation of Washington did not pass any bread laws between December 23, 1814, and May 18, 1842, but it will be observed that the repeal in the last-mentioned Act after specifically mentioning the three preceding Acts, also repeals all others.

APPENDIX I

Chapter 94.

An Act repealing certain acts relating to the weight and quality of bread and for other purposes.

Be it enacted by the Board of Aldermen and Board of Common Council of the City of Washington, That the acts approved April 17th 1806, October 3rd 1809, December 23d, 1814, and all other acts relating to the weight and quality of bread, be, and the same are hereby repealed.

Sec. 2. And be it enacted, That all bread sold as wheaten bread shall be made of superfine flour, and, all bread mixed with other substances shall be sold as mixed bread; and if any person shall offer or sell mixed bread as wheaten bread, he or she shall forfeit and pay the sum of two dollars for each and every offense, and if any baker shall be found guilty of mixing in his bread any deleterious matter calculated to injure the health of the consumer, on conviction thereof, shall suffer and pay to this corporation the sum of ten dollars to be recovered and applied as other fines are.

Approved May 18, 1842.

First laws District of Columbia, 37 to 42 Council.

APPENDIX J

Chapter 130.

An Act to regulate the weight and quality of bread.

Be it enacted by the Board of Aldermen and Board of Common Council of the City of Washington, That from and after the passage of this Act it shall not be lawful for any baker or other person, to make or bake for sale or sell or expose to sale any bread as wheaten bread which is not made of inspected flour superfine brand—and well baked, and all bread mixed with other flour shall be sold as mixed bread and every baker or other person violating either of the provisions of this section shall on conviction thereof forfeit all such bread for the use of the asylum and in addition thereto shall forfeit and pay not less than five nor more than ten dollars for every offense.

Sec. 2. And be it enacted, That it shall not be lawful for any baker or other person to adulterate the purity of the flour from which bread is made, further than is necessary to the well baking or making of the same, or to put therein deleterious matter and every baker or other person convicted thereof shall forfeit and pay the sum of twenty dollars for every offense.

Sec. 3. And be it enacted, That if any baker or other person shall make or bake any bread for sale or any baker or vendor of bread shall sell or expose to sale any bread deficient in weight according to the assize made and prescribed from time to time as hereinafter directed, such baker or other person so offending on conviction thereof shall forfeit and pay the sum of one dollar for every loaf so sold or exposed for sale or found in his or her possession and in addition thereto all such bread shall be forfeited for the use of the asylum, provided, however, that in giving a decision under this section the magistrate shall make a reasonable allowance for the staleness of the bread.

Sec. 4. And be it enacted, That all bread made, sold or offered for sale shall be made in single or double loaves to be so termed from their weights the weight whereof shall be proportioned to the price of superfine flour ascertained and published as directed in the fifth section of this Act; the single or double loaves of bread shall be of the same weights and regulated by the cash price of superfine flour agreeably to the following table:

PRICE OF SUPERFINE FLOUR PER BARREL.	WEIGHT OF A SINGLE LOAF.	WEIGHT OF A DOUBLE LOAF.
$4.00 to $4.50	27 ounces.	54 ounces.
4.50 to 5.00.	25 "	50 "
5.00 to 5.50.	24 "	48 "
5.50 to 6.00	23 "	46 "
6.00 to 6.50	22 "	44 "
6.50 to 7.00	21 "	42 "
7.00 to 7.50	20 "	40 "
7.50 to 8.00	19 "	38 "
8.00 to 8.50	18 "	36 "
8.50 to 9.00	17 "	34 "
9.00 to 9.50	16 "	32 "
9.50 to 10.00.	15 "	30 "

Sec. 5. And be it enacted, that in the last week of every month the register or in his absence the person acting as such, shall from respectable dealers in flour living in the City of Washington, ascertain the cash price of superfine flour, which he shall cause to be published in such newspaper as publish the laws of the corporation, with the weight of the bread for the information of those concerned and the price so published shall be the guide and standard under which the weight of bread shall be regulated for the month succeeding, provided, however, that upon any sudden rise or fall in the cash price of superfine flour it may be lawful for the register or person acting as register in manner aforesaid to establish the standard weight of bread weekly

instead of monthly, during the continuance of such rise or fall of price and no longer.

Sec. 6. And be it enacted, That if any baker or bakers or other person shall sell or expose for sale any bread in any store, shop or market, or from any cart or other carriage in the city, it shall be the duty of any police constable or of the clerks of the markets from time to time and whenever any complaint is made to take cognizance thereof and if found deficient in weight or quality as required by the several provisions of this Act all such bread shall be forfeited and sent to the asylum for the use thereof and the baker, seller or owner shall be forthwith prosecuted for the recovery of the fine or fines under the provisions of this Act.

Sec. 7. And be it enacted, That all fines under the provisions of this act shall be recovered and distributed as is by law provided for the recovery and distribution of other fines.

And be it enacted that the Act approved May 18th 1842, entitled "An Act repealing certain Acts relating to the weight and quality of bread and for other purposes" be and the same is hereby repealed.

Approved April 17th 1845.

Fifth Laws of the Corporation of Washington. From 42 to 44 Com. Council. 1844-47.

APPENDIX K

Chapter 200

An Act regulating the quality of bread and repealing the assize thereof

Be it enacted by the Board of Aldermen and Board of Common Council of the City of Washington that it shall be unlawful hereafter for any person or persons to make, sell or offer for sale within the limits of this corporation, any description of bread known as bakers' wheaten bread unless the same shall be composed of the best quality of pure, sweet superfine flour, free from adulteration, well baked and stamped in legible letters with the true initials of the baker's name upon the upper surface of each loaf, and any person or persons who shall make, sell or offer for sale within the limits of this corporation any unwholesome bread or bread composed of inferior flour or other materials or adulterated in any manner or any description of bread not stamped or marked with the initials of its maker's name and such device as he may select in legible letters upon its upper surface, which initials and device shall be recorded in the register's office, he, she or they thus offending shall upon conviction forfeit and pay for every such offense a fine not exceeding five nor less than three dollars, to be collected and applied as other fines are collected and applied.

Sec. 2. And be it enacted that all Acts and parts of Acts relating to bread and the assize thereof heretofore passed by this corporation shall be and the same are hereby repealed.

Approved April 20, 1850.

6th Laws of the Corporation of Washington.

APPENDIX L

Chapter 41

An Act regulating the quality and weight of bread

Be it enacted by the Board of Aldermen and Board of Common Council of the City of Washington, That from and after the first day of September next, it shall be unlawful for any person or persons, to make, sell or offer for sale within the limits of this corporation, any description of bread known as bakers' wheaten bread, unless the same shall be composed of the best quality of pure, sweet, superfine flour, free from adulteration and well baked.

Sec. 2. And be it enacted, That from and after the first day of October next, all bread offered for sale shall be made in half loaves, loaves and double loaves; the half loaves shall weigh eight ounces, the loaves sixteen ounces and the double loaves thirty-two ounces, avoirdupois; and any person or persons who shall offer for sale any bread not made in conformity with the provisions of this Act, shall for each offense forfeit and pay a fine of not less than five nor more than ten dollars; one-half to the use of the informer, to be prosecuted and collected in the same manner as other fines for violations of the laws of this corporation.

Sec. 3. And be it enacted, That all Acts or parts of Acts inconsistent with this act, be and they are hereby repealed.

Sec. 4. And be it enacted, That it shall be the duty of the several clerks of the markets, to inspect all bread offered for sale in their respective markets, every market morning, and all bread offered for sale contrary to the foregoing provisions shall be forfeited and sent to the almshouse and also it shall be the duty of each and every police officer to enforce the provisions of this Act.

Approved August 31st 1854.

52 to 54 Council.

Sheahan's Digest of the Laws of Washington. Appendix page 14.

APPENDIX M

Chapter 301

An Act to regulate the quality and sale of bread

Be it enacted by the Board of Aldermen and Board of Common Council of the City of Washington, That from and after the passage of this Act, it shall not be lawful for any person or persons to make, sell or offer for sale, any description of bread known as baker's wheaten bread, unless the same shall be composed of the best quality of pure, sweet superfine flour, free from adulteration and well baked, and all such bread shall be sold by weight and avoirdupois pounds and ounces, and be weighed at the time of selling or offering the same for sale, and any person or persons who shall sell or offer to sell any bread not made in conformity with this act or who shall refuse to weigh any such bread at the time of sale or who shall not truly declare at the time the weight of each loaf, or if more than one loaf, the true aggregate weight thereof, he, she or they thus offending shall upon conviction thereof, forfeit and pay for every such offense a fine of not less than two dollars nor more than five dollars, to be collected and applied as other fines are collected and applied.

Sec. 2. And be it enacted, That the Act approved the 31st August 1854, entitled "An Act regulating the weights and quality of bread" and all other Acts and parts of Acts inconsistent with this Act, be and the same are hereby repealed.

Approved April 26th 1855.

52 to 54 Council.

Sheahan's Digest. Appendix page 21.

APPENDIX N

An Ordinance for regulating and fixing the assize or weight of bread, approved 16th June, 1806

I. Be it ordained by the Board of Aldermen and Board of Common Council of the corporation of Georgetown that from and after the first day of July next, all wheaten bread made and offered for sale within the town or limits, shall be made in single or double loaves to be so termed from their weights; the weights whereof to be proportioned to the price of flour to be ascertained agreeably to the provisions of this Ordinance and the weights of the single or double loaves shall be regulated by the cash price of flour according to the following table, viz:

(By the Ordinance of 28 Aug. 1806, this table was repealed and a new one fixed and by the Ordinance of 30th April 1908, another was established.)

The price of the single loaves to be not more than six and one-half cents, the double loaves not more than twelve and one-half cents.

II. And be it further ordained, That from and after the first day of July next, all wheaten bread made and offered for sale in the town or precincts shall be made from flour duly inspected either as superfine or fine, without any intermixture, or flour from any other grain, under the penalty of five dollars for every such offence and all bread exposed for sale shall have marked upon it the name or the initials of the name of the maker together with a stamp designating the quality of the bread, *i. e.* whether made from flour of superfine or fine quality.

III. Be it further ordained, That if any person shall expose or offer for sale bread of less weight than is prescribed and fixed by the table annexed to the first section of this Ordinance; the bread so offered for sale shall be sold

and the proceeds thereof to be distributed, one-half to the informer or informers and the other one-half to the clerk of the corporation for the use of the town and the person so offering the bread for sale shall moreover be subject to a fine of two dollars to be distributed as aforesaid and if any person shall, after the first day of July next, expose or offer for sale any bread without being stamped and marked according to the directions in the second section of this Ordinance, he shall be subject to and pay a fine of five dollars to be distributed in manner aforesaid, provided always that information to recover any fine under this Ordinance shall be lodged with the Mayor or any Justice of the Peace within two days after the alleged illegal act may have been detected or discovered, and provided further, that the Mayor or Justice of the Peace, in giving his decision touching the weight of bread shall be at liberty to make reasonable allowance for the staleness or dryness of the bread.

IV. And be it further ordained, That in the last week of every month the Mayor, or in his absence the Clerk of the Corporation, shall ascertain from respectable merchants dealers in flour and residing in the town, the cash price of flour, which he shall cause to be published in a newspaper printed in the town and the price so ascertained and published shall be the standard or rule by which the bakers or venders of bread shall be regulated and governed in making and selling their loaves during the next succeeding month, provided, that in case of any sudden rise in the cash price of flour, it shall and may be lawful for the Mayor to establish in manner aforesaid the price of flour by the week, and to regulate the weight of bread accordingly, but this regulation is to cease as soon as flour resumes its ordinary and fixed rates.

Ordinances of Georgetown, D. C. 1791-1830. 1831-1837.

APPENDIX O

An Ordinance to repeal in part an Ordinance entitled "An Ordinance for regulating and fixing the assize or weight of bread," approved 28th August 1806

Be it ordained by the Board of Aldermen and Board of Common Council of the corporation of Georgetown, That so much of the above recited Ordinance as fixes the table of price of bread be and the same is hereby repealed, as also so much thereof as requires the initials of the maker's name and quality of the bread be stamped on the loaves.

Note: The second section of this Ordinance was superseded by the Ordinance of 30th April 1908.

Ordinances of Georgetown, D. C., 1791-1830, 1831-1837.

APPENDIX P

An Ordinance to alter and amend an Ordinance to repeal in part an Ordinance entitled "An Ordinance for regulating and fixing the assize or weight of bread, approved 30th April, 1808

Be it ordained by the Board of Aldermen and Board of Common Council of the corporation of Georgetown, That from and after the passage of this Ordinance, the weight of single loaves and double loaves of bread shall be regulated by the cash price of flour according to the following table, anything in the previous Ordinance to the contrary notwithstanding:

PRICE OF SUPERFINE FLOUR PER BARREL.	WEIGHT OF A SINGLE LOAF.	WEIGHT OF A DOUBLE LOAF.
From $4.00 to $4.50	27 ounces.	54 ounces.
" 4.50 to 5.00	25 "	50 "
" 5.00 to 5.50	24 "	48 "
" 5.50 to 6.00	23 "	46 "
" 6.00 to 6.50	22 "	44 "
" 6.50 to 7.00	21 "	42 "
" 7.00 to 7.50	20 "	40 "
" 7.50 to 8.00	19 "	38 "
" 8.00 to 8.50	18 "	36 "
" 8.50 to 9.00	17 "	34 "
" 9.00 to 9.50	16 "	32 "
" 9.50 to 10.00	15 "	30 "

APPENDIX Q

History of Bread Legislation

The history of the legislation affecting the sale of *bread* discloses this significant fact: That the *weight* of the bread was always fixed *in connection with the price and quality;* in other words, neither at any time in Europe nor until a very late day, in the United States, was bread legislation directed to regulate the weight without at the same time regulating, in connection therewith, the price and quality.

In England the first bread legislation seems to have been An Ordinance of Assize, made in the reign of King John, the purpose of which appears to have been to regulate the charges and profits of bakers.

The statute called *assisa panis et cervisiae* enacted in the 51st year of Henry III (A. D. 1266) was (at the petition of the bakers of Coventry) an exemplification of these ordinances of assize made in the reign of King John. After the specification of the Table of Assize in the act, it was stated: "that then a baker in every quester of wheat (as it is proved by the King's bakers) may gain four pence and the bran, and two loaves for advantage; for three servants three half-penny, for two kneading one half-penny, for candle one farthing, for wood twopence, for his bultel (or bolting) three half pence, in all six pence three farthings, and two loaves for advantage."

It is significant that in this early bread act, as well as in all English bread legislation up to the time of the repeal of all acts providing for an assize of bread, due regard was always had to the relation which price, weight and cost of raw material bore to each other, so the statute of 51st of Henry III provided that

> "when wheat shall sell at twelve pence the quarter, the farthing loaf shall weigh 10 L. 11 S 6 D. which weight (as was usual in those times) being expressed in pounds, shilling and pence."

When the Troy weight was established in the 18th of Henry VIII, the tables of assize were duly adjusted and subsequently in the 13th of Charles I, when the avoirdupois weight was introduced, the tables were again adjusted according to the principle that 73 ounces Troy equal 80 ounces avoirdupois. The table of assize made provision for eight different sorts of bread, and the statute provided for frequent readjustment of price and weight to the cost of raw material.

In the latter part of the reign of Queen Elizabeth, a Book of Assize was published by Order of Council, which refers to a former Book of Assize, and it appears that

> "Anno, 1405, 12 Henry VII, when the best wheat was sold at 7s. the second at 6s. 6d. and the third at 6s the quarter,
>
> The Baker was allowed,

	s	d
Furnace and wood	0	6
The Miller	0	4
Two journeymen and two apprentices	0	5
Salt, yeast, candle and sack bands	0	2
Himself, his house, his wife, his dog and his cat	0	7
In all	2	0

> And the Branne to his advantage."

It is also significant that under these various assizes, the policy of the law was not merely to fix the weight of bread, but also the price with regard to the cost of raw material, and what, in the opinion of the authorities, would be a proper profit to be allowed to the baker. The money allowance appears by its specified application in the statutes to have been for the purpose only of repaying the baker's charges for grinding and baking, while he was allowed "advantage loaves" for his maintenance and profit.

By the statutes of 8th of Anne, it was directed

> "that the magistrates in setting the assize of bread, are to have respect to the price, the grain, meal or flour whereof said grade shall be made, shall bear in the several public markets."

Similar provisions are found in the 31st of George II and later statutes.

By the act of the 37th of George II, and the subsequent acts by which that act has been explained and amended, the operation of those acts was limited to the City of London and the territory within ten miles of the Royal Exchange.

By the act of 31st George II it was left to the discretion of the magistrates to fix the price of bread, either by the price of wheat or by the price of flour, as they may see fit. This was an innovation from the ancient Assize system, as from the year 1202 to 1709, the price and weight of bread depended solely on the price of wheat, and the allowance to the bakers always included the charges for grinding and bolting, while under the statute of 37th George II, the Assize magistrates could fix the price and weight of bread either in accordance with the fluctuations in the price of wheat or in the price of flour.

The following table exhibits the assize price of bread in London in 1814:

Price of flour in shillings	Price of quartern loaf	Price of 8-lb. loaf	Price of 4-lb. loaf	Price of 2-lb. loaf	Price of 1-lb. loaf
	s. d.	s. d.	s. d.	s. d.	s. d.
30	0 6½	1 0	0 6	0 3	0 1½
35	0 7¼	1 1¼	0 6¾	0 3½	0 1¾
40	0 8	1 2¾	0 7¼	0 3¾	0 1¾
45	0 8¾	1 4	0 8	0 4	0 2
50	0 9½	1 5½	0 8¾	0 4½	0 2¼
60	0 11	1 8½	0 10¼	0 5	0 2½
70	1 0½	1 11	0 11½	0 5¾	0 3
80	1 2	2 1¾	1 1	0 6½	0 3¼
90	1 3 1/3	2 4½	1 2¼	0 7¼	0 3½
100	1 5	2 7¼	1 3¼	0 7¾	0 4

(Encyclopedia Brittanica Vol. III, p.250.)

After an experiment covering a period of almost six hundred years, this governmental interference with the vocation of the baker in England proved so unsatisfactory and so ill adapted to the modern system of civilization that in 1815 the House of Commons seriously concerned itself with an investigation of the whole question, and appointed a committee

> "to inquire into the state of the existing laws which regulate the manufacture and sale of bread, and whether it is expedient to continue the assize thereon, under any and what regulations, and to report the House, together with their observations and opinions thereon."

On June 6, 1815, the committee presented its report, which, after a careful review of the entire history of bread legislation in England, reported that

> "they are distinctly of the opinion that more benefit is likely to result from the effects of a free competion in the trade, than can be expected to result from any resolutions or restrictions under which the trade could possibly be placed,"

and concludes its report with the following resolution:

> "Resolved, that it is the opinion of this committee that it is expedient that the bread assize laws for the City of London, and within ten miles of the Royal Exchange, shall be forthwith repealed."
>
> VI. Pamphleteer, 148.

In 1832 these assize laws, as far as they affected the City of London, and within ten miles of the Royal Exchange were repealed by the 3 George 4 c. 106 and in 1836, by the bread act of 6 and 7 Will. 4. c. 37, the bread assize laws were also repealed, as far as their operation in the

entire kingdom was concerned. In their stead statutes were enacted which were merely in the nature of reasonable police regulations in the matter of adulteration of bread and providing for the weighing of the same.

It is more than significant that, after an experience of hundreds of years in the matter of regulating the weight of bread, the act of 3 George 4, as well as the act of 6 and 7 Will. 4. (the English bread laws now in force), grant to the bakers unlimited freedom of contract and leave the size and weight of the loaves to be determined alone by the exigencies of their business and the requirements of the consumers.

Some of the provisions of these several acts are:

> SEC. 2. "It shall and may be lawful for the several bakers or sellers of bread within the City of London and the liberties thereof, within the weekly bills or mortality, and within ten miles of the Royal Exchange, to make and sell or offer for sale, in his, her or their shop, or to be delivered to his, her or their customer or customers, bread made of flour or meal of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, or potatoes or any of them, and with any common salt, pure water, eggs, milk, barm, leaven, potato, or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredients or matter whatsoever subject to the regulations hereinafter contained."
>
> SEC. 3. "It shall and may be lawful for the several bakers or sellers of bread within the limits aforesaid, to make and sell or offer for sale, in his, her or their shop, or to be delivered to his, her or their customer or customers, bread made of such weight or size as such bakers or sellers of bread shall think fit, any law or usage to the contrary notwithstanding."
>
> SEC. 4. "All bread sold within the limits aforesaid shall be sold by the several bakers or sellers of

bread respectively within the limits by weight; and in case any baker or seller of bread within the limits aforesaid shall sell, or cause to be sold, bread in any other manner than by weight, then and in such case every such baker or seller of bread shall, for every such offense, forfeit and pay any sum not exceeding forty shillings, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct; provided, always, that nothing in this act contained shall extend or be construed to extend to prevent or hinder any baker or seller of bread from selling bread usually sold under the denomination of French or fancy bread, or rolls, without previously weighing the same."

SEC. 3. "It shall and may be lawful for the several bakers or sellers of bread beyond the limits aforesaid to make and sell, or offer for sale, in his, her or their shop, or to deliver to his, her or their customer or customers, bread made of such weight or size as such bakers or sellers of bread shall think fit; any law or usage to the contrary notwithstanding."

Later (1889) by 52 and 53 Vict. c. 21, the provisions in the acts requiring bread to be weighed in the presence of the purchaser were restricted to sales of bread made in the bakeshops, viz:

> "Nothing in the enactments referred to in the fourth schedule to this act shall render any baker or seller of bread or the journeyman, servant, or other person employed by such baker or seller of bread, liable to any forfeiture or penalty for refusing to weigh in the presence of the purchaser, any bread conveyed or carried out in any cart or other carriage, unless he is requested so to do, by or on behalf of, the purchaser."

And this is the state of the bread legislation of England at the present time.

In GERMANY the assize of bread (Brottaxe) was maintained until the last remnants of the mediæval restrictions upon the exercise of the various trades and callings were cleared away by the enactment in 1869 of the "Gewerbe-Ordnung." This law removed all the shackles with which the trades were fettered, and substituted therefor reasonable police regulations. In the matter of the sale of bread, this law provides:

> Section 73. "The bakers and sellers of bread may be required by the local police authorities, during certain times, to be fixed by these authorities, to inform the public of the prices and weights of their various goods, by placards affixed to their shops, so that they can be seen from the outside."
>
> Section 74. "Where the local police authorities restrict the sale of bread by bakers and sellers to be made only in accordance with the prices placarded in their shops, the authorities shall also have the right to require that scales and sealed weights be maintained in the shop, so as to permit the weighing of the goods sold."
>
> Gewerbe-Ordnung Fuer Das Deutsche Reich, August 6, 1896.

In the cities of FRANCE the business of the baker was particularly a subject of state supervision, but all the laws and regulations were swept away by the revolution of 1789, which proclaimed absolute freedom of trade. Under the reign of Napoleon I this system of complete freedom was again discarded by his "Arrete" of October 11, 1811, and the permission to carry on the business of a baker was made dependent upon four principal conditions:

(1) The existence of a demand in the particular locality for a bakeshop.

(2) The personal efficiency of the applicant for the license, and his good character.

(3) The requirement that the baker must always have on hand a sufficient amount of flour for his demand for the period of fifteen days, about one-half of which had to be stored in a municipal warehouse, and the remainder in the shop.

(4) The obligation not to quit the business or to reduce it or to move it to another part of the city, except upon six months' notice to the authorities.

By later decrees the number of bakeshops was limited to one for every eighteen hundred inhabitants of Paris. The flour reserves were increased from one hundred and thirty-five to five hundred and forty bags for each baker, in accordance with his output, with a view that each baker should constantly have enough flour in storage for an output of three months. Up to a definite maximum limit, price and weight of bread were fixed from time to time, in accordance with the market price of flour, and after 1823 price and weight were adjusted every two weeks. The most important feature, however, of French bread legislation as affecting Paris, was the creation of a *"Caisse de la boulangerie,"* the object of which was to prevent the price of bread at any time from exceeding fifty centimes per one thousand grammes, and into which fund the bakers were required to make contributions at times, when, owing to the low price of flour, their profits were large, and out of which they were reimbursed for their losses in case flour reached an inordinately high price. The condition continued to exist until 1863, when the scheme was entirely discarded and superseded by some few simple police regulations.

Revue des Deux Mondes, Vol. 4, p. 964, Ibid
Vol. 5., p. 400.

It is also significant that the French bread laws expressly exempted from their operation *"Pain De Luxe,"* seems to be the French name for what the English statutes and what we call "fancy bread."

In the United States, the laws, customs and usages of the parent countries (England and Holland) were introduced in colonial times. In the matter of fixing the weight of bread the sensible principle of adjusting weight to price was followed.

On November 8, 1694, the Director General and Council of New Netherlands passed an ordinance that the bakers who henceforth make a business of baking bread for sale shall manufacture it either of pure white or pure rye, as these come from the mill, in loaves of eight, four and two pounds of weight, *at such price as shall be fixed by their Honors, the Court, from time to time, according to the value and rate of purchase of the grain.*

On June 5, 1651, the Director General and Council passed another ordinance ordaining that for the accommodation of the poor as well as the rich the baker shall bake rye bread as well as white and wheaten bread, under pain of being excluded from that business and fined twenty-five guilders for the first time he shall be found violating the ordinance.

On October 26, 1656, the Director General and Council passed another ordinance requiring bakers baking bread, whether for Christian or barbarian, to bake at least once or twice a week, both coarse and white bread, of stated weights and prices.

On April 26, 1658, we find an ordinance providing:

> "Bakers shall bake the white bread and coarse bread, according to the weight and sell it at a price established or hereafter to be established, according to the dearness of the grain."

The first bread ordinance of the city of New York after the establishment of the Union seems to be the ordinance for

> "establishing the assize and regulating the sale of bread,"

passed March 2, 1812. It is a regular assize ordinance, requiring loaf bread to be marked with the initial letters of the maker, to be made of wholesome flour or meal, *in accordance with the regular assize from time to time, the specified weights to govern only during the first eight hours after the bread has been baked,* and making allowance for shrinkage after the expiration of eight hours. It also requires the chamberlain to publish every Saturday an assize of bread for the ensuing week.

Although we have made diligent search, we are unable to state definitely how long this old assize bread ordinance of the city of New York remained in force, but it certainly ceased to be operative in 1857, when it was replaced by the following bread ordinance:

> "Sec. 1. All bread baked and offered or exposed for sale in the City of New York shall be made of good wholesome flour and meal, and sold by avoirdupois weight.
>
> "Sec. 2. If any baker, or other person, shall make for sale, offer or procure to be sold, any bread of other than wholesome flour or meal, or shall sell the same contrary to the preceding section, such person shall forfeit and pay the sum of ten dollars for every such offense.
>
> "Sec. 3. All bread offered for sale in this city, not in conformity with provisions of this chapter, shall be forfeited and shall and may be seized and disposed of for the use of said city."

This ordinance is the same as the one that we find in the last compilation of ordinances of the city of New York published on January 1, 1905, and, apparently, has not been expressly repealed. It is to be noted that under its provisions a New York baker may adjust the weight of his goods to the prevailing standard prices of five, ten and fifteen

cents, etc., and the only restriction as to weight is that the bread must be sold by weight. In view of the provisions of the New York constitution as expounded by its court of last resort, even that restriction is of doubtful validity, and the last section of the ordinance, concerning the seizure and forfeiture of bread for the use of the city, is clearly invalid. We have reliable information that the ordinance is a dead letter.

The Massachusetts bread ordinances passed in Colonial times are all assize ordinances, such as the ordinances of 1652, 1698 and 1720. The principal features of all these ordinances are substantially that

> "the selectmen of each town, within the province where bread is baked for sale, shall once every month, and oftener if they see cause, set to ascertain and appoint their several towns, the assize and weight of all sorts of bread to be sold, or exposed for sale, by any baker or other person whatsoever, having respect to the price of the grain, meal or flour, wherever such bread shall be made, shall bear in or about the town or place where such assize shall be set, and making reasonable allowances to the bakers for their charges, pains and livelihood, and shall make known their set regulation of the assize of bread in some open and public place or places in their respective towns."

In 1859 the legislature passed a bread law of five sections. The first provides for loaves two pounds in weight. It also provides for half, three-quarters and quarter loaves, but not otherwise. The second section provides for a list to be placed in a window of a bakery, showing the kinds and qualities of loaves sold there, and the price of each. The third section provides for the weighing of the bread in the presence of the buyer. The fourth section provides for a fine. The fifth section excepts from the purview of the law rolls or fancy bread weighing less than one-quarter

of a pound. This Act of 1859, in practically its original form, remains in force in the State of Massachusetts to-day.

In this connection it should be noted that the constitution of Massachusetts permits the legislature to have a much wider latitude in interfering with the right of contract than the constitutions of most, if not all, of the other States.

According to our latest information, the city of Boston has no bread ordinance, nor do we find any bread ordinances in any other of the important cities of Massachusetts.

The State of Michigan seems to have no general statute on the subject of bread. The first bread ordinance of the city of Detroit is the ordinance of April 21, 1870, which was passed upon by the Supreme Court of the State of Michigan in

People vs. Wagner, 86 Mich. 594,

which is fully considered in the discussion under the head of "Adjudication Upon American Bread Legislation."

This ordinance has since been amended so as to permit the baker *to sell loaves of bread of any desired shape or weight.* As so amended, this ordinance is still in force.

None of the other large cities of Michigan has a bread ordinance prescribing weight.

The city of Port Huron had, until May 28, 1908, a bread law which provided for loaves of one, two and four pounds, but on said day the Circuit Court of St. Clair County, in the case of City vs. Endlich, held the law was unreasonable and void. The city did not appeal from this finding. (Appendix S.)

The bread ordinance of the city of New Orleans is an old-fashioned assize ordinance. It was passed in the early part of the last century, and while amended in 1869, its substantial features remain the same. The full text of the ordinance is as follows:

> "An ordinance for establishing the assize and regulating the weight and inspection of bread.

"Art. 73. (Section 1) Be It Ordained, That all bakers or other persons now engaged in, or doing and carrying on business as bakers, or engaged in making or baking bread for others, shall immediately, after the promulgation of this ordinance, report themselves at the mayor's office, and cause his, her or their name or names and place of business to be recorded in a book to be kept for that purpose in the mayor's office, and shall in all respects conform to the provisions of this ordinance; and hereafter, every person intending to undertake the bakery business, or any such person or persons who may be engaged in the same, either in person or by employing any other person to carry on the said trade or business under his or her directions, or for his or her profit, within the limits of the city of New Orleans, must, previously to his or her commencing in that business, make a declaration of his or her intention at the mayor's office, and have his or her name entered in a book kept for that purpose; and in default, shall be liable to a fine of twenty-five dollars, recoverable before any of the recorders of this city, or other court of competent jurisdiction, for the benefit of the city.

"Art. 74 (Section 2) All bakers or other persons using or carrying on the trade or business of a baker shall make, or cause to be made, all their loaf bread of good and whole-some flour, no brand to be used less than treble extra, and they shall give it the weight, which may be fixed by virtue of the present ordinance, or any other ordinance hereafter passed relative thereto by the common council; and further, all bakers and persons using or carrying on the trade or business of a baker, shall only be allowed to sell, or expose for sale, loaves of bread of the value of five cents, ten cents and twenty cents; provided, all loaves of bread shall have the weight fixed by said tariff.

"Art. 75 (Section 3) Bakers, tavern-keepers and other persons selling bread, or offering the same for sale, are required to have the weights and scales only regulated by the standards; and the inspectors of weights and measures are authorized to proceed to try them agreeable to the law respecting weights and measures.

"Art. 76 (Section 4) It shall be the duty of the commissaries of the markets, and the deputy street commissioners at least once in each week, to inspect and examine, within the several wards or districts of this city and the public markets, all loaf bread baked by, or for, or on account of any baker or bakers, in order to ascertain whether the same is made of good and wholesome flour, and to ascertain whether the weight conforms to the established assize; and to that end said commissioners and deputy street commissioners are hereby authorized and required, at any time between sunrise and sunset, to enter any bakery, bake-house or shop, storehouse or other building or enclosure wherein loaf bread may be baked, stored, deposited or kept, as also any tavern, shop, store, or any other place wherein loaf bread is deposited, stored or kept for sale; provide the authority of the officer thus about inspecting be first made known to the proprietor of the establishment, or his agent or representative. And it shall further be the duty of the commissaries of the markets and the deputy street commissioners, for the purpose of said inspections through the public streets or highways, to stop all persons carrying bread for sale in baskets, carts, wagons, or otherwise, upon said streets or highways, and examine and weigh such bread; and upon said examination should they find such bread, on an average of ten loaves to the hundred, to be unwholesome *or wanting in weight,* the officer making such examination under this ordinance, shall seize the bread,

and immediately notify the proprietor of the bakery, bakeshop, etc, to appear before one of the recorders of this city, who, upon due proof made, shall pronounce the seizure and confiscation of such bread for the use of the orphan asylums of this city, and shall further condemn the offender or offenders to pay a fine of not less than twenty-five dollars, nor more than fifty dollars; and in default of payment thereof such offender or offenders shall be imprisoned not exceeding thirty days. Any commissary or deputy street commissioner neglecting or refusing to enforce the foregoing shall be dismissed from office.

"Art. 77 (Section 5) The Mayor shall publish in the official journal of the city, every Saturday, an assize for bread for the ensuing week. To this effect he shall estimate a barrel of flour to produce three thousand seven hundred and thirty-two ounces of bread (American weight); and in order to ascertain the weight of a five-cent loaf, the number of ounces shall be divided by a number equal to the number of five cents a barrel of flour may be worth in the market at the time of fixing the assize, and adding the eight dollars, or one hundred and sixty-five cents allowed to a baker by law, the quotient shall be the number of ounces a five-cent loaf shall weigh.

"Art. 78 (Section 6) Wherever, according to the preceding operation, the fractional parts are less than half an ounce, they shall be taken off the loaf; and when half an ounce or more, an ounce shall be added to it. The whole, moreover, in conformity to the tariff subjoined to the foregoing ordinance:

TARIFF.

Price of Flour.

Per Bbl.	20c Loaves.	10c Loaves.	5c Loaves
$4.00	62 oz.	31 oz.	16 oz.
5.00	57 "	29 "	14 "
6.00	53 "	27 "	13 "
7.00	50 "	25 "	12 "
8.00	47 "	23 "	12 "
9.00	44 "	22 "	11 "
10.00	41 "	21 "	10 "
11.00	39 "	20 "	10 "
12.00	37 "	19 "	9 "
13.00	35 "	18 "	9 "
14.00	34 "	17 "	8 "
15.00	32 "	16 "	8 "
16.00	31 "	16 "	8 "

"Art. 79 (Section 7) Any baker or other person carrying on the business of baker, or engaged in making and baking bread, as aforesaid, who shall mix, or use, or permit to be mixed or used, in the manufacture of bread, any alum, vitrol, or any other unwholesome deleterious substance, shall, on conviction before any of the recorders of the city, or any other competent court, be fined a sum not exceeding one hundred dollars; and in default of payment of such fine, shall be imprisoned not exceeding thirty days.

"Art. 80 (Section 8) *Bread to order shall not come within the provisions of this ordinance.*

"Art. 81 (Section 9) All ordinances and resolutions conflicting with the foregoing be, and the same are hereby repealed.

Art. 82. That from and after the passage of this ordinance, each and every person or persons dealing in bakers' bread shall post, in a conspicuous place at his or her place of business, the weights and prices of the

loaves offered for sale; and any violation of this ordinance shall be punishable by a fine of fifty dollars for each and every offense, recoverable before any court of competent jurisdiction.

"Art. 83 (Section 2) All ordinances, or parts of ordinances contrary to or conflicting with the above, be and the same are hereby repealed."

Aside from the assize features, the provisions exempting *"bread made to order"* are extremely significant. Like most assize bread ordinances, the price of loaves (in this instance, five, ten, fifteen and twenty cents) is taken as the standard, and the weight adjusted to the price, in accordance with the fluctuations in the cost of flour.

The constitution of the State of Louisiana in force at the time of the passage of this ordinance, contained *no* provisions such as the provisions of the Fourteenth Amendment of the Constitution of the United States.

The bread ordinance of the city of Mobile, Alabama, enacted January 21, 1826, is also an old style assize bread ordinance, and has long since been repealed. At the present time Mobile *has no bread legislation whatever.*

The city of San Francisco never had and does not now have a bread ordinance, neither has the State of California ever passed any legislation in regard to the manufacture and sale of bread.

The colonial assize bread laws of Pennsylvania remained in force until 1797, when a statute was passed requiring all loaf bread to be sold by avoirdupois weight. This statute which, among other things, provides for a penalty of "five pounds" seems never to have been repealed. Its constitutionality has never been tested, and our information is that it has practically been a dead letter upon the statute books, although contracts made in violation thereof have been declared to be void, the statute expressly containing a provision that all contracts for the sale of loaf bread not based upon avoirdupois weight shall be void.

None of the principal cities of Pennsylvania has a bread ordinance.

The only bread ordinance we have been able to find ever to have been in force in Cincinnati is the ordinance of June 4, 1900, which contains the following provisions:

> "It shall be unlawful for any person to offer or expose for sale any bread unless the same is made of good, wholesome flour or meal, or both, and all bread offered or exposed for sale shall have the weight of the same stamped upon each loaf."

The ordinance contains no provisions restricting the baker from making loaves of any size or weight.

The city of Columbus has no bread ordinance, nor has the city of Toledo.

The city of St. Paul has no bread ordinance.

The city of Minneapolis in 1891 passed an ordinance requiring loaf bread to be made into loaves weighing not less than one and two pounds, respectively, with a proviso, however, *that any baker may sell loaves of bread of any desired shape or weight, if plainly marked with the true weight of each loaf.*

The city of St. Louis has no ordinance prescribing the weight of loaf bread, and the only bread ordinances in force are such as pertain to sanitary measures.

The city of Milwaukee has no bread ordinance.

The city of Buffalo passed an ordinance fixing the weight of loaf bread at one and one-half pounds, but this ordinance was declared to be unconstitutional in

> City of Buffalo vs. Collins Baking Co., 39 Hun. 432,

and no additional legislation on the subject of the weight of bread has since been passed.

The cities of *Indianapolis, Louisville, Portland, Providence, Grand Rapids* and *Jersey City* have no municipal legislation concerning the weight of loaf bread.

The result of our most careful inquiries may be summarized as follows:

Kansas City, Mo., had a bread law which provided for loaves of one and two pounds avoirdupois weight, but this law was held an unreasonable interference with a private business in City vs. Smith by the Police Court of that city.

According to the best information obtainable by us the following cities of over 50,000 inhabitants (in 1900) have no ordinances requiring bakers to sell loaf bread in definite sizes only:

Name	Population	Name	Population
New York	3,437,302	New Haven	108,027
Philadelphia	1,293,697	Fall River, Mass.	104,863
St. Louis	575,238	St. Joseph, Mo.	102,979
Boston	560,892	Omaha	102,055
Baltimore	508,957	Scranton, Pa.	102,026
Cleveland	381,768	Paterson, N. J.	101,171
Buffalo	352,387	Lowell	94,969
San Francisco	342,782	Albany	94,151
Cincinnati	325,902	Cambridge	91,886
Pittsburgh	321,616	Portland, Ore.	90,426
Milwaukee	285,315	Atlanta	89,872
Newark	246,070	Grand Rapids	87,565
Jersey City	206,433	Dayton	85,333
Louisville	204,731	Richmond	85,050
Minneapolis	202,718	Nashville	80,865
Indianapolis	169,164	Seattle	80,671
Providence	175,597	Camden	79,935
Kansas City	163,752	Hartford	79,850
St. Paul	163,065	Reading	78,951
Rochester	162,608	Wilmington	76,508
Toledo	131,822	Trenton	73,307
Allegheny	129,896	Bridgeport	70,996
Columbus	125,560	Oakland	66,960
Worcester	118,421	Lynn	65,513
Syracuse	108,374	Lawrence, Mass.	62,959

Name	Population	Name	Population
New Bedford.....	62,442	Savannah	54,244
Springfield, Mass...	60,059	Salt Lake City.....	53,531
Summerville	61,643	San Antonio.....	53,321
Hoboken	59,254	Duluth	52,969
Evansville, Ind.....	59,007	Des Moines.....	52,139
Manchester, N. H..	56,987	Elizabeth, N. J.....	52,130
Utica, N. Y.....	56,383		

We could only learn of bread ordinances, requiring bakers to sell loaf bread in definite sizes only, as in force in the following cities of over 50,000 inhabitants:

Detroit 285,701

(Since repealed)

Peoria 56,160

In the State of Illinois there are fifty-three cities with a population (in 1900) of 5000 and over, incorporated under the general incorporation law. Of these fifty-three cities there are only two outside of Chicago, that is *Peoria* and *Joliet,* having ordinances attempting to require the baker to sell loaf bread by definite weight only.

See opinion of Judge Windes of the County Court, city of Chicago vs. Schmidinger (Appendix R), and which is now pending on appeal to the Supreme Court of Illinois.

APPENDIX R

Oral Opinion of Judge Windes as Delivered in Deciding This Case

In view of the importance of this case, I would take the time to carefully review the numerous decisions that have been cited by counsel, but the pressure of judicial work is so great that the Court is of opinion that it is really time lost, because if these cases are reviewed, as no doubt they will be, it is of very slight importance to the reviewing Court that this Court should discuss the numerous authorities cited.

The basic question presented here, as it seems to the Court, is as to the validity of Paragraph 52 of Section 1 of Article V of the City and Village Act. I thought that I had it marked, but I have not, so I cannot give the exact language of it, but as I remember counsel's statement of the section, it clearly gives to the City Council the right to fix the weight of bread, as well as the quality of the bread. That is a specific power given to the City Council, I think, and there is some doubt in the mind of the Court, after hearing counsel's extensive argument upon it, as to whether it violates the sections of our State Constitution referred to by counsel in the argument, especially Sections 1 and 2 of Article II of our State Constitution, and the Fourteenth Amendment of the Constitution of the United States.

However, in view of the fact that the power of the legislature of this State to pass laws is unlimited, practically, unless specifically limited by the Constitution which affects that power, as was referred to in the argument of Mr. Cassels, and the Court called attention to it. The question was very thoroughly and fully discussed when the legislature of this State passed an Act which gave to the Park Commission of Lincoln Park the fee of certain portions of the bed of Lake Michigan. It was very strenuously argued by the Attorney-General and his assistants, in that case, that that

was beyond the power of the legislature. I think there were at least ten different counsel in the case, and no case that I ever tried in this county ever impressed me with its importance any more than that. I held that it was within the power of the legislature to make that grant, and it was sustained by the Supreme Court. I think that is about twelve years ago. I don't remember the book and page, but the matter which especially impressed me there was as to the supreme power of the legislature unless it was limited by the Constitution.

In view of that general proposition and the further one that I think is a very important one, that it is the duty of every trial court, as argued by Mr. Cassels, that every presumption be indulged in favor of the validity of any legislation of this State, and that our Supreme Court, in at least two cases, I remember particularly the Drainage Canal case, when the validity of that law was being discussed before it, made use of some such language as this: That it is the duty of the Court in passing upon the constitutionality of any Act of the legislature to sustain it unless it was invalid beyond all reasonable doubt, this Court has endeavored on all questions which have been presented to it, involving the validity of any Act of the legislature, to be guided by that general rule. For the judiciary to assume the province of declaring void any legislation of the State when there is a reasonable question as to its validity, I think is going beyond its legal rights and duties. In that connection, however, within the last two years I have resolved the doubt in favor of different Acts of the legislature of this State, but I was reversed by the Supreme Court, and it seems to me that the decisions of our Supreme Court within the last few years have been stronger than they ever have been heretofore since the Supreme Court has existed in this State, in declaring legislation invalid as violating the Constitution. I don't say that by way of criticism at all of the Supreme Court, but I think that it has gone to a greater extent in a number

of its decisions in declaring legislation invalid than any decision of the Supreme Court prior to ten years ago.

While I consider there is a very grave doubt as to the validity of this section of the City Charter, I regard it my duty to hold that that section is within the power of the legislature, because I regard it my duty to give the benefit of the doubt to the Act of the legislature. So the ruling of the Court with regard to the validity of Section 52 of the City Charter is that it is not invalid as being unconstitutional.

Whether this ordinance here in question is reasonable within the power given to City Councils by virtue of that section, I think is a very, very different question. In other words, whether this ordinance is a reasonable exercise of the power given to the City Council as to the fixing of the weight of bread, and whether that ordinance by its terms violates the sections of the Constitution of this State and of the United States which have been referred to.

The Fourteenth Amendment, in so far as material here to the Constitution of the United States, says:

> "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Then Section 2 of Article 11 of the State Constitution:

> "No person shall be deprived of life, liberty or property without due process of law."

Section 2 of this ordinance fixes the weight of every loaf of bread made, procured for the purpose of sale, sold, offered or exposed for sale in the city of Chicago. It shall weigh one pound, or it shall weigh a half a pound, three-quarters, or it shall be two pounds, three, four, five or six pounds, and every loaf of bread which is made or procured for sale in the city shall be of these weights and they shall be made in no other way.

And Section 4 of the same ordinance says: "Any bread the loaf or loaves of which are not standard," that is, referring to a pound loaf, "half, three-quarters, double, triple, quadruple, quintuple or sextuple loaves, as defined in Section 2 of this ordinance, which may be made or sold or offered or exposed for sale within the city of Chicago," it is said, "is a violation of this ordinance," and the penalty fixed is a fine not less than ten dollars nor more than one hundred dollars.

As I construe that section, in connection with the section of the ordinance, in view of the decisions which I will not undertake to refer to or discuss at this time, there is a clear violation of the right to contract by any baker or person selling bread in the city of Chicago, because without selling a half loaf or three-quarters of a loaf of bread no contract can be made for the sale or manufacture of any bread where the loaf does not weigh a half a pound or three-quarters of a pound, one, two, three, four, five or six pounds. In view of the evidence presented here, it is clearly established, I think, that there is a very considerable demand for bread of different weights than the ones prescribed by the ordinance, and while it is possible, in view of the evidence here, for the manufacturers to comply with this ordinance, though not a strict compliance, I think there can be no question but that it deprives the manufacturers of bread of their right under these constitutional provisions to contract for the sale of bread in different forms from that prescribed by the ordinance.

Then it seems to me also that if it be conceded that this ordinance does not exceed the letter of the City Charter with regard to prescribing the weight of loaves of bread, it is a very unreasonable ordinance, considering the usual and ordinary course of manufacture of bread within the city for years past, and it is conceded by counsel in argument here, as I understood, that there must be at least a reasonable compliance through the ordinance with the statute which gives the City Council the right to prescribe the weight of

bread. For instance, if the Council had passed an ordinance here requiring every loaf of bread to weigh twenty pounds, it would be so unreasonable as not to be within the purview of the statute at all.

For the same reason I think the ordinance should be held unreasonable because there is no limit of time within which the bread should be of a certain weight, as prescribed by the ordinance. It is true there is some basis for the argument on behalf of the city here, that it is more reasonable as the ordinance stands than it would be if a specified limit of time were fixed, but in view of the evidence here with regard to how bread may be affected by surrounding conditions after it is taken from the oven, the difficulty in fixing accurately the weight of each loaf before it is baked, the Court is of opinion that the ordinance, in order to be valid, should fix the time with reference to when the bread is baked, or when it is exposed for sale, as to what weight it should be.

It seems to the Court also that it is very unreasonable that this ordinance, while it says there may be half-pound loaves or three-quarter-pound loaves, it in effect says there can be no loaf of one pound and a half or one and three-quarters, or any fraction of a pound as to any loaf from two up to six pounds.

In view of the demands hereby the trade in the city of Chicago for bread of certain weights, for the lunch counters and sandwiches and so on, it seems to me that the ordinance is unreasonable in that it does not allow the baker to contract with the consumer as to loaves of bread of a specific weight.

A good deal was stated by counsel in the argument as to the ordinance being a violation of the Constitution in that it was special legislation, referring, no doubt, to Section 22 of Article IV of the Constitution, but no provision of law has been presented upon that point. Also that it is special in that it makes distinction between the sellers of loaf bread while it is fresh and when it is stale. As counsel puts it, in substance a baker could, under this ordinance,

bake his bread and keep it until it is stale and then sell it, without violating the ordinance. I think that, while a logical conclusion from this ordinance, is not a reasonable one, because it is not supposed that any baker would bake bread and keep it to sell purposely as stale bread, although it is possible under the ordinance that he could do this and not be subject to the penalties of the ordinance, no matter what kind of a loaf he might make, if he sold it as stale bread. That being rather a strained construction of the ordinance, in view of what would be the ordinary course of business, I do not think that the ordinance should be held to be special legislation.

Now, with the exceptions under Section 5 of the ordinance, by which it is said that it shall not apply to "crackers, pretzels, biscuits, buns, scones, rolls or fancy bread weighing less than one-quarter of a pound, or to what is commonly known as stale bread," I think it is, omitting the stale bread provision there, quite doubtful as to whether there is not a distinction made there which would place it as class legislation, because we all know that there is a great deal of this bread which is used, and because there is a doubt as to whether that could be construed as special legislation in favor of a particular class and discriminating against the bakers of loaf bread. I think the ordinance should not be held to be invalid because it is class legislation.

In substance it is the holding of the Court that the ordinance itself as to Sections 2 and 4, there being no question made as to Sections 1 and 3 as invalid, because it interferes with the right of contract as provided by the constitutional provisions referred to, and it is unreasonable. It is also in restraint of trade, that resulting from the fact that under the ordinance no contract could be made for the sale of any bread except as provided in the ordinance. It is unreasonable because it fixes no time at all as to when the weights of the different loaves of bread should be determined.

The discussion by the Court of the bread cases, particularly of Alabama, Louisiana and Michigan cases, I regard as unnecessary, because of the extent of the Massachusetts

Constitution, on which the Detroit case, the Michigan case, is based, or, rather the decisions of the Massachusetts Court on its constitutional provision; and because the Alabama and Louisiana cases I regard as cases which should not control this Court in passing upon the validity of this ordinance, because the conditions and circumstances under which those cases were decided is so different from what they are in the city of Chicago to-day. And while those cases may have been in point with what was known in all English-speaking communities to be the law then, I do not think that they should control here, under the changed conditions and circumstances of this great city.

New Orleans, at the time of the Louisiana case was decided, could not have had more than one-tenth of the population that there is here, and the popoulation was vastly different from that in the city of Chicago. The city of Mobile at the time the Alabama case was decided could not have had one-hundredth part of the population that Chicago has to-day.

I will state to counsel I would be glad to give this case careful attention and write my views if I had the time, and discuss the numerous authorities that have been cited, but for reasons that I have referred to I do not think it necessary, and I will hold the propositions of law as to Sections 2 and 4, except the provision of Section 4 relating to violations of Section 1 as invalid, but I would not hold Section 3 of the ordinance invalid, because counsel for defendant in his argument said that there was no question as to Section 3.

It would follow from this holding that there could be no recovery in this case and judgment for the defendant will follow.

(Note: In preparing this brief, counsel desires to acknowledge his indebtedness for much of the history and argument therein to the brief of Messrs. Rubens, Fischer & Mosser, attorneys for appellee, in the City of Chicago (appellant) vs. Schmidinger.)

APPENDIX S

The People of Michigan vs. John A. Endlich, in which Judge HARVEY TAPPAN, Judge of the Circuit Court of St. Clair County, held as follows:

> "The defendant, John A. Endlich, is charged with violating Section 3 of an ordinance of the City of Port Huron duly passed and approved on February 9th, 1900."

This ordinance provided for the regulation of the manufacture and sale of bread within the city as follows:

> "All bread of every description manufactured by the bakers of this city for sale shall be made of good wholesome flour or meal into loaves of one pound, two pounds and four pounds, avoirdupois weight, and of no other weight, and no baker or dealer shall make for sale or shall sell or expose for sale any bread that is deficient in weight as prescribed in this section."

There is no act of the legislature specially authorizing the passage of this ordinance and the city authorities claim the right to pass and enforce the ordinance by virtue of the general power granted by virtue of Compiler's Section 97 of the charter of the city of Port Huron, which provides as follows:

> "The Common Council shall have power to tax, license and regulate any trade, occupation, profession or business, carried on in the city, or any corporation doing business in said city, and may regulate the trade or commerce in said city."

The proofs show that the defendant on the 23d day of March, 1908, made for sale, exposed for sale and did sell, bread of different weight from that provided for by the ordinance in question, as follows:

One loaf of the weight of fourteen ounces, one loaf of the weight of eight ounces, and one loaf of the weight of four ounces, avoirdupois.

Upon these respective loaves was securely pasted labels one and one-fourths by two inches in size, on which was printed in large-faced type and figures:

"Fractional loaf, Endlich's 7/8 loaf, 14 oz. price 5 cents, bread, Port Huron, Michigan."

"Fractional loaf, Endlich's 1/2 loaf, 8 oz. price 3 cents, bread, Port Huron, Michigan."

"Fractional loaf, Endlich's 1/4 loaf, 4 oz. price 2 cents, bread, Port Huron, Michigan."

Proofs also show that at the time of manufacturing and selling these smaller loaves so labeled, defendant also manufactured and sold loaves of bread one pound weight, avoirdupois, which he sold for six cents.

Proofs as undisputed that the price of flour fluctuated and that at the time of the ordinance in question was approved, February 9, 1900, it sold for $3.65 per barrel, and in March, 1908, it sold for $5.40 per barrel.

Defendant also testified that for years the price of bread to the consumer had remained fixed at five cents. That it was impracticable to raise this price and would seriously injure defendant's business to do so; that the prices fixed for the fractional loaves were the nearest in cents that it could be fixed, and that these prices were fair and reasonable, the cost of flour and cost of labor and general increase of production being considered.

It is also admitted that the fractional loaves in question were made of good wholesome flour.

It is apparent that the object of this ordinance is to prevent fraud upon purchasers of bread means of selling them a loaf of bread of a certain weight while it was in fact of less weight.

The principal legal question involved is whether or not the Court may pass upon the reasonableness or unreasonableness of the ordinance in question.

The ordinance is based upon the charter provisions for the general regulation of trade or manufacture. There is no expressly granted power to pass this particular ordinance.

Courts almost universally hold that where such authority is expressly granted, the Court will not consider the reasonableness or unreasonableness of the ordinance.

Where authority is implied because the Act in question is necessary for the exercise of some express power granted;

Or where the authority is implied because the Act is reasonably necessary and convenient to corporate existence or the performance of corporate duties, then in each of these two cases the Court will and may require into the reasonablness and unreasonableness of the ordinance in question. See

Abbott on Municipal Corporations, Vol. 2, p. 1358.

People vs. Armstrong, 73 Mich. 268.

CONCLUSION

It is, therefore, my conclusion and finding of fact and law:

(1) That the ordinance in question as applied to the facts of this case is unreasonable in its restrictions and void as to the prevention of the sale of fractional loaves of bread labeled as were the loaves in question in this case.

(2) That there was no fraud or deceit attempted by the defendant, and that as to him the provisions in question are void so far as it interferes with his right to sell fractional loaves of bread labeled as were the loaves involved in this case.

(3) That the defendant is not guilty as charged.

The Decision of the Court of Appeals in the Hauf Case is as Follows:

This case is before us on a writ of error granted to review a judgment of the Police Court.

George Hauf was charged by information filed in the Police Court with offering to sell in the city of Washington, on August 31, 1908, loaves of wheaten bread which weighed less than sixteen ounces each, in violation of an ordinance of the late mayor, board of aldermen and board of common council of the late corporation of Washington, approved January 7, 1858.

The defendant moved to quash the information upon several grounds, among which are: The ordinance is unconstitutional and void; the charter of the late corporation of Washington conferred no authority to enact such an ordinance; it is unreasonable, uncertain and meaningless.

A certified copy of the ordinance as contained in the minutes of the late corporation of Washington, now in the custody of the District government, reads as follows:

"Be it enacted by the Board of Aldermen and Board of Common Council of the city of Washington, That from and after the fifteenth day of January, eighteen hundred and fifty-eight, it shall not be lawful for any person or persons to sell or offer for sale within the city of Washington any loaf bread manufactured of wheaten flour, whether that known as baker's wheaten flour or any other (except bread made of unbolted wheaten flour, or bran bread, hereinafter provided for), unless the same shall be composed of the best quality of pure, sweet, superfine wheaten flour, free from all adulterating ingredients and from any improper or unwholesome mixture whatever.

Section 2. And be it enacted, That the loaves of wheaten bread sold in this city shall be of three distinctive sizes or weights, to-wit: the first to weigh not less than sixteen nor more than eighteen ounces avoirdupois; the second to weigh not less than thirty-two nor more than thirty-five ounces avoirdupois; and the third to weigh not less than sixty-four nor more than sixty-eight ounces avoirdupois weight; and each loaf of bread shall have legibly stamped or impressed thereon the weight of the bread in figures one, two and four. The figure one to be stamped on the loaf of bread of the first weight, the figure two on the second weight, and the figure four on the third weight.

Section 3. And be it enacted, That loaves of bread made of rye flour and of bread made of unbolted wheaten flour, or bran bread, shall, when offered for sale, be of the same distinctive sizes or weights as are prescribed for loaves of wheaten bread, and shall also be free from any adulterating or unwholesome ingredient whatever.

Section 4. And be it enacted, That any person or persons offering to sell bread in loaves different in weight or quality from those prescribed in this act,

shall forfeit the same, and shall pay a penalty of two dollars for every loaf so offered for sale and for every loaf actually sold; the information to be lodged with a police magistrate within twenty-four hours from the time the bread is so offered for sale or sold; one-half of said penalty to be given to the informer; Provided, however, that in rendering his decision, the magistrate shall be bound to make a reasonable allowance for the staleness of the bread or loss of weight by drying.

Section 5. And be it enacted, That it shall be the duty of the several clerks of markets in this city to inspect all bread offered for sale in their respective markets; to weigh it when they think proper, and to seize the same when varying from the weight and quality prescribed by this act; and, on proof before a magistrate, all bread offered for sale contrary to the provisions of this act shall be forfeited and sent to the almshouse for the use of the poor, except when its use will be pernicious to health; in which case it shall be destroyed.

Section 6. And be it enacted, That it shall be the duty of each and all of the police officers, whenever they shall deem it necessary, to enter the bake houses, stores and shops in which bread is sold in their respective wards, and also to overhaul the carts and other vehicles employed in carrying bread around to houses, and to examine and weigh the bread found therein, and if such bread or any part thereof shall not be made in conformity with the directions of this law, said police officers or either of them shall proceed against the person or persons so offending agreeably to law.

Section 7. And be it enacted, That if any baker or vender of bread by himself, or herself, or by his or her agent, shall refuse to permit the bread in his or her possession to be examined and weighed, at a reasonable hour, by any police officer or clerk of market, or shall

conceal the same from the police officer or clerk, who desires to examine or weigh the same, he or she shall forfeit and pay not less than twenty dollars nor more than thirty dallars for every day's refusal.

Section 8. And be it enacted, That all bread, buns, rolls, crackers, biscuit, cake or baked dough, not hereinbefore dscribed or provided for, shall, when sold, be sold by actual weight in avoirdupois pounds and ounces, such weight to be made by the vender at the time of sale, by means of scales approved by the sealer of weights and measures; and any person or persons who shall neglect or refuse to weigh in the manner prescribed such bread, buns, rolls, crackers, biscuit, cake or baked dough, not provided for in the previous sections of this act, and to declare truly the weight of the same, shall, upon proof before a police magistrate of thus offending, forfeit and pay for every such offense a fine of not less than two dollars nor more than five dollars; one-half to go to the informer and the other half to the city funds; Provided, however, that the process of weighing shall not be obligatory when the purchaser or his or her agent shall volunteer to dispense with the same.

Section 9. And be it enacted, That all acts and parts of acts inconsistent with this act be and the same are hereby repealed."

The motion to quash was sustained and the defendant discharged. From that order the writ of error was granted on the application of the District of Columbia.

1. The first question to be considered is the jurisdiction of this Court to review the order quashing the information. We have heretofore held that this Court has no power to entertain an appeal by the United States from a judgment of the Supreme Court of the District declaring a defendant not guilty of the offense charged against him, for the pur-

pose of reviewing alleged errors committed in the trial, without affecting the finality of the judgment. U. S. vs. Evans, 30 App. D. C. 58; 34 Wash. Law Rep. 756. And the same ruling has been made to apply to a writ of error to the Police Court under the same conditions. D. C. vs. Burns, present term. But those decisions do not govern this case, because there has been no trial on the merits, no adjudication of not guilty. The Police Court refused to proceed to trial, because it held the ordinance invalid. The defendant has not been put in jeopardy, and may, therefore, be rearrested and brought to trial upon the charge in case the judgment quashing the information be reversed. Code, Sec. 935; U. S. vs. Evans, 28 App. D. C. 264; 34 Wash. Law Rep. 739; 30 App. D. C. 58, 61; 34 Wash. Law Rep. 756.

2. The next question is whether the ordinance of the late corporation of the city of Washington hereinbefore recited is still in force.

At the time of the enacting of said ordinance there were three separate forms of municipal government in the District of Columbia. These were the corporation of the city of Washington, the corporation of the city of Georgetown, and the Levy Court. The charters of the two cities controlled in the territories comprised within the designated limits of said cities respectively. The jurisdiction of the Levy Court extended to all the territory of the District not included in the limits of said cities.

By Act of Congress approved February 21, 1871, the charters of the two cities were repealed and the Levy Court abolished. A new form of municipal government was created for the entire District. 16 Stat. 419. Section 40 of said Act, in repealing the city charters provided that the portion of the District included within the limits of each shall continue to be known as the city of Washington and the city of Georgetown, respectively; and further, as follows: "But all laws and ordinances of said cities, respect-

ively, and of said Levy Court, not inconsistent with this Act, shall remain in full force until modified or repealed by Congress or the legislative assembly of said District." Evidently this saving clause was not intended to extend the operation of any unrepealed ordinance beyond the limits of the municipal government by which it had been enacted. In many instances the several corporations had promulgated ordinances and regulations relating to the same general subject-matter, but differing in their provisions. For example, the city of Georgetown had an ordinance, adopted in 1806 and amended in 1808, regulating the sizes of loaves of baker's bread, the labeling of the same to denote inspection, and the prices to be charged therefor. The bread ordinance of the city of Washington has never been modified or repealed by subsequent Acts of Congress or of the legislalative assembly of the new government, and the question is, Was it repealed by the Act of February 21, 1871, because inconsistent therewith?

As the cities of Washington and Georgetown had grown considerably since their original Acts of incorporation, and the District generally was increasing in population, public policy suggested a new form of municipal government that would comprehend the entire District and bring all of its inhabitants under one power of control and regulation for all purposes. Evidently one of the main objects of the new legislation was to subject the inhabitants of the entire District to the equal operation and protection of all police regulations, general in their nature and affecting the interests of all in a like manner. If all such general regulations of the several preceding municipal governments, not expressly repealed by the organic Act of February 21, 1878, or by some subsequent authoritative Act, are to be held to be still in force, the people would, in some instances, be subjected to two or three conflicting regulations of the same thing, determinable by the particular part of the District in which an act affected thereby may have been done. Another consequence of holding this ordinance to be still in

force within the limits of the old city of Washington, would be that a baker within those limits would not be able to sell the prohibited loaves of bread to any one, while one just over the boundary line, but within the limits of the modern city, could sell the same with impunity.

Thus the effect of the enforcement of the ordinance might be to injure the business of the baker in the old city, or compel him to remove beyond the boundary, without, at the same time, accomplishing the purpose of its enactment. In view of these conditions, we are of the opinion that the ordinance is inconsistent with the Act of February 21, 1871, and was therefore repealed by it.

Having been repealed, it could not be revived by the Act of February 11, 1895 (28 Stat. 650), adding Georgetown to the city of Washington, and extending all general laws, ordinances and regulations of the latter territory to the former.

It is unnecessary to consider the other objections that have been made to the validity of the ordinance. For the reasons given, the order quashing the information will be affirmed, with costs. Affirmed.

37 Wash. Law Rep. 356.

After the Hauf case proceedings were instituted against Henry Schlichting, in Alexandria, Va., and tried in the Police Court of that place. The decision, from which there was no appeal entered, is as follows:

The bread law of the city of Alexandria is embodied in Sections 2 and 10 of Chapter 16 of the Code of 1874. The first of these sections provides for the inspection of bakeries and the bread products thereof by the Market Master, and for the seizure by him of all bread which shall not be made according to the regulations then in force.

Section 10 provides: "All bread, exposed or offered for sale, within the limits of the City of Alexandria, shall be in loaves of the weight of eight pounds, four pounds, two pounds, and one pound. Any person offering for sale any

bread, short of the weight it purports to be shall forfeit and pay Five Dollars for each offense." And in this same section is set forth the method of procedure in cases arising under the ordinance.

The case in question arose out of the seizure by the Market Master of certain loaves of bread exposed and offered for sale in this city by Henry Schlichting on the 28th day of June, 1909. These various loaves were of different weights, being seven-eighths of a pound, half a pound, quarter of a pound, and one and one-half pounds, and were, in some instances, labeled, showing the weight of bread in the loaf, and some were without labels. The exact weight and the label attached to each loaf is set forth in an itemized statement hereto annexed. The evidence was to the effect that all these loaves were of the weight they purported to be, and there was no dispute as to the facts in any phase of the case.

It is contended by the city that this act on the part of Henry Schlichting was in violation of the bread law of the city, and that he thereby rendered himself liable to the fine prescribed. And on the part of the defendant it is argued that the acts of the said Schlichting were not in violation of the ordinance; and secondly, that if in violation of the ordinance the same is void on the ground that it is an unreasonable exercise of the police power. To ascertain whether the acts in question constitute a violation of the ordinance it is necessary to find the meaning thereof. And it appears that there can be but one construction of this law. It expressly provides that all bread, without qualification, exposed or offered for sale shall be in loaves of certain weights. The second clause providing a penalty must be read in connection with and not independently of the first; so that the phrase "purports to be" must be held to refer to the weights named in the first section, that is, eight, four, two and one pound. The object of the law was evidently to protect the buyer from fraud and to assure him that bread purchased would be found to comply with these regulations

as to weight. If it should be construed to mean that a loaf of the weight prescribed could be baked and then cut in any manner this object would be defeated, for any weight loaf could be twice or thrice cut and the buyer would be ignorant of the weight of any part thereof unless he took the pains to weigh or have it weighed. Furthermore, the merchant who had thus cut and sold a part of a one-pound loaf could not be considered exposing or offering for sale a loaf, and would be violating the regulations set out in the first clause of Section 10. For a part cannot under any circumstances be considered a whole. And the provision prescribing confiscation by the Market Master of all bread made other than according to the regulations in force prevents the baking of irregular or fractional loaves.

Hence, under this law it seems certain that bread can only be baked in loaves of eight, four, two and one pound, and that such loaves in their entirety only can be exposed or offered for sale, and that if this ordinance is valid there has been in this case an infraction thereof.

This and similar laws are passed under what is known as the police power vested in the State, and which the State of Virginia has delegated to this city in Section 14 of the city charter. This section grants to the city the power "to make all laws which the City Council shall deem expedient or necessary for the preservation of the health of the inhabitants and for the regulation of the morals and police of the City." This is a general granting of power, and ordinances passed thereunder must be reasonable to be valid. The ordinance in question was passed at least thirty-five years ago and has not been amended since though trade conditions and custom demands have shown marked changes. Its purpose was to protect against fraud on the part of the seller and perhaps it served that purpose a generation or so ago. Loaves of the weights prescribed were such as were in demand, but the baking of bread has progressed with everything else, and the demands of the trade upon the bakers is different to-day from what it was thirty-five years

ago. At that time fancy breads, rolls, biscuits and individual loaves such as are in common use in hotels were unknown, but at present the sale of these fancy breads constitutes a large part of the trade. The consumer asks for bread of different weights than those prescribed in this ordinance, and it is an unreasonable law that prohibits the bakers from supplying this demand. Their business is a perfectly legal one, and the city is not empowered to destroy any part of their trade. This law was passed for an age that is now distant, and to hold it good at this day would work an unreasonable hardship not only upon the baker but upon the consumer, for it is not a reasonable law that makes it impossible for a consumer to buy half a pound, quarter of a pound, or any other weight of bread. Reasonable regulations for the sale of bread are proper under the charter provisions, but to provide that only four specific sizes of loaves can be made, bought or sold, does not in any way appear reasonable or necessary for the protection of the community. For these reasons I believe this ordinance obsolete and void, and so hold.

LABELS

No. 1. "Fractional Loaf 7/8 Loaf 14 oz."
5 cents.
No. 2. "Fractional Loaf 7/8 Loaf 14 oz."
No. 3. "Fractional Loaf."
No. 4. 5 cents.
No. 5. "Fractional Loaf 1/2 loaf 8 oz."
3 cents.
No. 6. "Fractional Loaf 1/2 Loaf 8 oz."
No. 7. "Fractional Loaf."
No. 8. 3 cents.
No. 9. "Fractional Loaf 1/4 loaf 4 oz."
2 cents.
No. 10. "Fractional Loaf 1/4 loaf 4 oz."
No. 11. "Fractional Loaf."
No. 12. 2 cents.
No. 13. "24 oz. Loaf."

(1) Make two loaves 14 oz and put label No. 1 on them.
(2) Make two loaves 14 oz and put label No. 2 on them.
(3) Make two loaves 14 oz. and put label No. 3 on them.
(4) Make two loaves 14 oz and put label No. 4 on them.
(5) Make two loaves 14 oz and put nothing on them.
(6) Make two loaves 8 oz and put label No. 5 on them.
(7) Make two loaves 8 oz and put label No. 6 on them.
(8) Make two loaves 8 oz and put label No. 7 on them.
(9) Make two loaves 8 oz and put label No. 8 on them.
(10) Make two loaves 8 oz and put nothing on them.
(11) Make two loaves 4 oz and put label No. 9 on them.
(12) Make two loaves 4 oz and put label No. 10 on them.
(13) Make two loaves 4 oz and put label No. 11 on them.
(14) Make two loaves 4 oz and put label No 12 on them.
(15) Make two loaves 4 oz and put nothing on them.
(16) Make two loaves 24 oz and put label No. 13 on them.
(17) Make two loaves 24 oz and put nothing on them.

Separate all the different kinds and keep them thus offered for sale.

An Address

delivered by

H. B. LEARY

of Washington

before the

Commissioners of the District of Columbia

on a

Proposed Bread Law

then under consideration

If the Board please:

In appearing before you to-day, in opposition to this proposed "bread law," I not only do so as a manufacturing baker myself, but as also the representative and spokesman of the bakers of the District of Columbia.

Indirectly, I might further say, that I represent and voice the sentiments also of the bakers of the United States, who are determined to contest in their various localities any existing laws which have as their object or purposes the regulation of weights, prices and profits, and to resist the passage of any new laws of similar purport or intent.

So determined is this opposition, that in the past couple of years a number of contests have been inaugurated in the courts, involving practically the same points which I will later present in opposition to the matter now under consideration, with the result that the contested laws have been uniformly held invalid. This determination is evidenced by the policy adopted by the National Association of Master Bakers, an organization made up of the best and most representative bakers of the United States, to lend its moral and financial aid, if it be required, to carry such cases to the courts of last resort, and since the determination of the Hauf case in this District, I have not only by request personally sent out a number of the briefs used therein, but have been also requested, and am now preparing to send copies of the brief to the National Association, so that 500 printed copies thereof may be made for distribution wherever such contests are in progress or contemplation.

Can any sensible person for a moment think that this determination and expenditure of time and money is dictated by any feeling other than the desire to save an industry from absolute annihilation?

As an additional preface to my remarks, it will be proper to say, that the manufacturing bakers of the District of Columbia, are an intelligent, respectable and law-abiding class of citizens, who contribute their fair quota to the taxes and expenses of the municipality, who invest and spend their money here, and who participate in and generally contribute to the well-being of the community.

Through the instrumentality of our pay-rolls in the neighborhood of ten thousand souls are assured of and gain their livelihood, and ours has been said to be the largest single manufacturing industry in the District of Columbia.

We are engaged in a business of a purely private character, having as our aims and ideals the production of bread as perfect and pure as it can be made, and the giving to the consumer full value for his money.

How far our aims and ideals have been realized need not be here discussed, because it is recognized by the trade throughout the country that no better bread is anywhere produced.

In return for this we only ask a fair profit for our labors and the many thousand dollars of capital invested, and that we be not unduly interfered with by legislation, adverse and inimical to our best interests.

These are certainly not unreasonable desires.

The business of making bread as has been heretofore said, is purely of a private character, and possesses no attributes of a public or even quasi-public nature.

We enjoy no monopoly in our avocation and are granted and possess no franchises, special privileges or immunities greater or more extensive than other manufacturers or merchants possess or enjoy.

Possessing no monopoly and being accorded no special privileges or immunities, we owe no duty to the municipality or legislative authorities other than the common duty of all, namely good citizenship, nor do we owe any duty to the public greater than other merchants or manufacturers, that of fairness and honesty and the production of a pure and wholesome article.

Competition in our trade is healthy, live and vigorous, and unlike the competition in any other business is not confined to persons and concerns engaged in a common undertaking, but comes as well from the private homes and cook stoves, and also from hotels, cafés and restaurants, who employ their own bread bakers.

Our business is free and open to all who see fit to engage in it, but notwithstanding this fact, a comparison of the directories of fifteen or twenty years ago will show that this city with its much smaller population had more

bakers then than it, with its greatly increased population, has now.

We object to the enactment into a law of the District, of this proposed law, for many reasons, one of the reasons being:

That it is an unwarranted and unwarrantable, arbitrary and unnecessary interference with and invasion of the right of citizens to pursue an ordinary private calling.

We object to this law because it singles out those who are in our line of business and holds them up to the public as presumable and probable swindlers and cheats, who need watching and regulating by law, while it leaves the butcher and grocer and probably thousands of other merchants and manufacturers free to market their wares in any shapes, sizes, quantities or weights they may desire. That this is both the purpose and effect of such a law no intelligent person can doubt.

It is difficult to conceive that there is any or can be any trade or business which is less in need than ours of being so regulated, for each of our customers, if he be dissatisfied with the commodity we furnish him, has it at his command or in his power to make bread for himself. This he can do with very few of the other commodities or necessities of life.

Despite this fact we are to be limited, restricted and confined by law in the sale of our product to prescribed and definite weights, and if we depart from the weights which are to be so prescribed, we are to be taken to the police court and fined, while other merchants and manufacturers may sell their wares and products in such quantities as they may wish or their patrons desire.

Previously to appearing here, we endeavored to learn whether there is any other commodity or necessity the sale of which is limited to prescribed and arbitrary weights, but were unable to learn of any.

Apparently the grocer is permitted to sell tea, coffee, sugar, butter, cheese, salt and pepper in pounds or ounces or in packages as he may elect or his trade demand. Vegetables and fruits in cans or jars are sold without respect to weight. Crackers, which are generally made outside of the District and come in free of tax or impost, are commonly sold in packages or boxes, and in competition with our bread.

The butcher may sell a roast of beef or leg of lamb or any other meat he may deal in, at whatever weight may appear on his scales.

Each druggist arbitrarily fixes, and hardly any two of them will agree on the amount of any drug, medicine or remedy they will sell for any given amount, and by no law of which we have any knowledge are they prevented from selling less than a fluidounce of any of the articles in which they deal.

It would be possible to go on at interminable length in directing attention to the articles, both necessaries and luxuries, which may be sold, and the persons who may sell them without any restriction being placed by law upon the quantity or weight which may be sold.

Other dealers have another advantage over us in addition to the lack of restrictions on the quantities and weights they may sell, in this: that if there be any change in the market, or if any untoward circumstance arises, which affects their business, they have but to increase their price. This is illustrated from time to time and is not infrequently experienced, in the increase of the price of coal and meats and other prime necessities, while with us the retail price of an ordinary loaf of bread is five cents, and this price is as fixed and certain and as immutable as anything could well be.

This statement is not made lightly or without knowledge, but is the result of a memorable personal experience of myself and the other bakers of this District, and followed an attempt to increase the price of a pound loaf of bread a single cent.

The result of this attempt was that the business of the bakers of the District was nearly destroyed, for the people either stopped eating bread or made their own bread. At any rate they to a great extent stopped purchasing and eating ours, until we were soon forced to go back to the old price, and not a few of us were driven to the banks to borrow money to repair the ravages that the futile attempt had caused.

The truth of these statements will be attested by others of my occupation, who are in this room, and who will further certify that the attempted increase was at the time justified by the exigencies of our business.

Since this attempt none of us have had the hardihood to again attempt any increase in the price.

The experience I have narrated was not only the experience of the bakers of the District, but has been the experience also of the bakers of Detroit and of other cities and towns in the United States, until all in our trade have come to recognize that a six-cent loaf of bread is not a commercial article.

These experiences teach two lessons: the first is that the consumers of bread are not dependent upon us for their supplies, and are in need of no law as has been here proposed; and the second is that we are dependent upon the public, and are the ones who need protection if any is to be extended.

In view of these considerations why should not we have the same right then as other merchants, the right for instance, if costs of production and sale and resulting small profits require it, to make and sell a 13-, 14- or 15-ounce loaf of bread and sell it for the prevailing price of five cents?

It is a fact not be controverted that it is to our best interests to give as great a quantity of bread for five cents as we can afford to do, natural competition in our trade will require it, and consequently should costs of production and selling costs decrease, it would necessarily compel an increase in the size of the loaf, which might run as high as eighteen or twenty ounces to the loaf.

Should, however, this proposed measure be enacted into a law, and precise weights be prescribed, the incentive for competition, by increasing the size of the loaf will be killed off and the public will lose the chance to gain an ounce or more in the size of the loaf, for the bakers will confine themselves to making bread of the weight prescribed, and will not go beyond it.

This statement is not speculative or problematical, or founded on a mere guess, for our knowledge of our business and experience in it, has taught us that wherever there is a bread law in force which prescribes exact weights per loaf, those weights are not increased by the baker, no matter how little the cost of production may be, and if there is to be competition between bakers it will not be by one increasing the size of his loaf over that of his competitor, it will instead be the production of a new brand of bread, maybe a new name, and the pushing of the sale thereof in our markets.

We fully realize that when we claim that we should not be required to make bread in standard weights only, many unthinking persons will call attention to the fact that the law has already prescribed "standards" of weights; that the law says, for instance, that 2240 pounds shall constitute a ton of coal, and that a bushel of wheat shall contain 60 pounds.

Such a statment would be entirely true, but these same unthinking persons would not take into consideration two things: namely, that a dealer in either of these commodities is permitted under the law to sell as much or little of the commodity as he is willing to sell, and the purchaser is willing to buy; and the second matter that would be overlooked is that the consumer cannot himself make any of the standardized articles.

The inequality of the laws establishing standards of weight, and the proposed bread law can well be illustrated by taking the coal law for an example: The weight of a ton of coal is 2240 pounds, but a dealer is permitted to sell a ton, or a ton and a quarter, or a ton and a half, or if his customer desire it, a bushel or even a peck may be sold, while under the proposed bread law we can sell nothing between a pound and two pounds, or anything under a pound and between three-quarters of a pound. And even if a demand existed, or it was to our best interests to sell loaves weighing two and one-quarter, two and one-half, two and three-quarter pounds, or loaves weighing between three and four, four and five, and five and six pounds, we would not be permitted to so sell.

Why should not we be permitted to sell any of these forbidden or prohibited sizes if the demands of our trade or business interests require it? Can any logical or sound reason be given why we should not do so?

As a matter of fact we do have a demand for bread in weights different from those prescribed in this regulation, and as an illustration of this I may mention the one and one-half pound loaf, which is quite commonly sold by the bakers of the District, and this loaf is not sold, either, under special contract so as to be exempt under Section 6 of the proposed law.

I suppose if we have this proposed law actually enacted will will have to suspend making the one and one-half pound loaf, and any other loaves which we now make and which may differ from those prescribed, and lose the trade

we have spent our time and money and invested our capital to build up.

We can either do this or defy the law and go on making bread in weights which we have a demand for, or that we can create a demand for, or that our business interests require us to make, and run the chance of a prosecution and fine like any other malefactor.

There is no more reason for such a law than there would be for a law which provided that no newspaper should be published or circulated unless it contained a specific number of columns of reading matter, or a law that provided that no coats should be made or sold unless the skirts thereof came to the knee, or that all chairs should have seats not less than thirty inches in width, or that tea, coffee, sugar or meats and canned goods or other common articles of diet or of use should not be sold otherwise than in specified weights only.

It does not require a particularly vivid imagination to picture the indignation and storm of protest which would arise, both from dealers and the public if an attempt were made to enact these suggestions into a law, and yet would they not be as proper and as reasonable as is the matter now under consideration?

The main and principal purpose of this law would appear on its face to be the creation of standards of weight, but this is not so, for it has a purpose which, though concealed from the unknowing, is vastly more radical, drastic and far-reaching than the mere fixing of standards.

It is a purpose which I have before hinted at, namely, the regulation of the price which shall be charged for our product and the profit which shall be realized in the conduct of a purely private business, both matters with which neither the municipality, the Congress or the public has any rightful or legal concern.

I have already said that the price of an ordinary loaf of bread is five cents. I have told you this price has been fixed by custom and usage of many years standing, and that it cannot be readily increased, and I have briefly stated the disastrous results which followed an attempt several years ago to increase the price, but I have not yet mentioned that this was the price which prevailed for a pound loaf of bread until the District Court of Appeals in the Hauf case decided that the ordinance of January 7, 1858, which

required the sale of a pound loaf was not a valid law of the District of Columbia.

Neither have I told you that for many years the bakers of the District very faithfully observed the old ordinance, although they had been frequently advised by counsel it had no legal effect, and they were not bound to respect it.

You will possibly wonder that we should have so long observed a law which we knew to be of no force.

The reason was simply this, that it had not proven especially burdensome to us, and we were consequently contented with it, with business conditions and the profits we realized.

True, there were years when, because of the increase in the cost of flour, our profits would be very small, and sometimes we even had difficulty in making ends meet, but, fortunately for us, these high prices would occur only once in four or five years.

Then, again, we observed this ordinance because as a result of an agreement between the then commissioners and some of us, some of the harsher features of the law were abrogated, by permitting bread to be weighed while hot, in bulk, and at the bakeries, which is the only proper and sensible way to do it.

After a time, however, as a result of the continued increase in the cost of materials, labor, fuel, selling expenses and the more or less natural increase of cost incident to the improved methods which we from time to time adopted to perfect our product, the old ordinance became exceedingly onerous, and we found that we would either have to increase the price or break the law.

We first then attempted, as I have said, to increase the price, but such a protest arose and such a curtailment of our business resulted that we soon abandoned the attempt.

From that time on the cost of production and sale have constantly increased without any substantial break in the advance, so it became apparent to us that the continued sale of a pound loaf at five cents meant practically the ruin of our industry.

This left but one alternative for us, if we wished to remain in the business, namely, a test of the old ordinance, which test was made and with the result I have mentioned.

Bakers of other cities having bread laws were confronted by the same conditions, and similar suits were insti-

tuted to test ordinances not unlike the old ordinance, and in fact, not unlike the one which is here proposed, with the result that in Chicago, Buffalo, Port Huron, Kansas City, and Alexandria, Va., the laws were held to be an unreasonable interference with a private business and consequently inoperative.

After we had defeated the old ordinance of Washington, we began to make bread in such weights as we considered our business justified, some bakers made loaves larger than their competitors and some smaller, the brands or grades which cost the most to produce are naturally of less weight than the cheaper grades, but in manufacturing and selling either grade to the public we are endeavoring to be fair and honest, and giving full value for the money paid us.

As I have said before, the main purpose of the proposed law is to force us to sell a pound loaf of bread for five cents and irrespective of whether we can afford to do so or not.

I have read that in past ages it was very common for the government to exercise the power of regulating and establishing what prices might be exacted for certain commodities or services, but this has long ceased to be the fashion, and I am told the general rule now is that in a private business a man is free to ask for his wares or his services whatever price he is able to get and others are willing to pay, and no one can compel him to take less, and I am further told that the legislatures and courts carefully guard these rights by permitting no impairment of them, unless the business which is to be regulated partakes of a public character.

Although this statement cannot be successfully controverted, the proposed law attempts by indirection and in its hidden object, to do what cannot be directly done, to fix our prices and regulate our profits.

Can any person within the hearing of my voice give me an instance where any attempt has been made within recent years to regulate the prices to be charged or the profits to be received in a purely private business?

I ask you, Mr. Commissioners and the business men who hear me as well, would you sit quietly and submit to any such attempt, if such attempts were directed at your private affairs or business?

In presenting my views concerning the disinclination of the courts and legislatures to permit any interference with business of a non-public or private nature, I have confined my remarks to private undertakings, but I can go a step further than this, for if my memory serves me, the courts have decided in the one cent a mile case, that a public railroad, possessing a valuable public franchise, could not be so regulated until at least a full and fair investigation had been made as to its earning capacity.

Of course, we expect that some of our opponents will say that we do not need to sell a pound loaf for five cents, and that we can sell instead the three-quarter pound loaf.

Possibly this is true, but it is just as possible that if we uniformly sold for five cents the three-quarter pound loaf our patrons would cease buying or eating our bread and it, additionally, would be hardly fair to the consumer to sell him such a small loaf when we might well be able to sell him, as we are in fact now doing, a loaf of thirteen, fourteen or even fifteen ounces.

In other words this law would cheat him out of the extra weight we might be able to give him.

All of these matters should be left to competition, which will at all times, but better without such unnecessary laws, regulate prices and quantity.

We object to such a law as is here presented because it is antiquated and out of date.

As I have said, it was in the past ages a very common thing to regulate the prices and profits of a private business, and the bakers, like many other avocations, came in for their share of such regulating.

The history of our industry gives as the reasons for such paternalistic interest and interference, the fact that such laws originated in countries (England, Germany and France) where the menu of the poorer classes was made up day in and day out, almost entirely of bread, and that largely because of the poverty of these poorer classes bread was in truth the staff of life, and the further fact that because of the lack of cooking facilities, particularly in the cities and towns (cook stoves then not having been invented), the bakers and their bakeshops were a public necessity, and the bakers were consequently, at least, quasi-public servants.

In the early days of our country the same reasons for bread laws applied with equal force.

These reasons have, however, long ceased to exist.

Our country for many years past has not been a bread-eating community; bread, instead of being the staff, is only one of the many staves of life, and by the invention and improvement in wood, coal, oil and even electric cook stoves (one kind or the other of which is to be found in every home), bakers and their ovens are no longer a public necessity.

In the olden days bakers not only baked bread, but at the request of their customers they even baked meats and other edibles. There may not be any persons present who will personally recall this, but possibly some of you will remember hearing your parents speak of it.

Not alone is the cook stove to be credited with the changes in this country, which I have mentioned; because much credit should be given to the prosperity we enjoy, the fact that we have comparatively few of the really poor, and as well the fact that the existence of one and the non-existence of the other, has resulted in a vastly improved mode of living.

The diet and menus of our people have been greatly extended within the last half of a century.

This has been brought about by the ease with which meats are kept and marketed, with which vegetables and garden stuffs are raised, and vegetables and fruits canned and preserved.

Having a large and well populated country and ample railroad facilities, makes it even possible for our people in one section, then having its winter, to have on their tables fresh vegetables and fruits grown in another section which is then enjoying a summer climate.

These causes, with many others, have contributed to create and continue the changed conditions which I have mentioned.

When bread laws, or "assizes," as they were then called, were first enacted, the policy was, not merely to fix the weight of bread, but also the price, having regard to the cost of raw material and what, in the opinion of the authorities, would be a proper profit to be allowed to the baker.

These old laws had the merit at least of being honest and not seeking to do by indirection what could not be directly done.

In course of time, however, when the laws were changed, the price and profit were not mentioned, and the laws

simply provided a scale of weights per loaf which would increase or decrease with the increase or decrease in the cost of flour.

Such was the law of 1806, the first we had on this subject in the city of Washington.

Comparing this law with the one we have now under consideration, we cannot help but comment on the greater wisdom which was displayed in the former, for it provided that the mayor of the city, in the last week of each month, should ascertain from respectable merchants the cash price of flour and should publish this price as a guide for the weight of bread for the succeeding month, but it gave him the right upon any sudden rise in the price of flour to establish the weight by the week instead of by the month.

Under the proposed law, however, if it be enacted, we would still be forced to follow the prescribed weights, until Congress saw fit to change the law, even though war-time prices for flour should prevail.

Laws are enacted to serve some proper or useful purpose and are supposed to have some substantial relation to the public health, safety, peace, morals and welfare.

It certainly cannot be contended that a law which prevents the bakers or venders of bread from selling loaves of such weights, as are in it prescribed, has any such relation.

Bread whether it be one of one weight or another can certainly not affect the public health, render living unsafe, cause breaches of the peace, induce immorality or prejudice, or impair the general welfare.

The weight of the loaf furnishes no evidence of its quality or health-containing and health-giving properties, its money value or the cost to produce it, for it is well known that a small loaf may not only be worth and cost more, but may also contain more substantial nutriment than a loaf of double the size.

These values depend on the constituent parts and the care exercised in its making and baking, and weight is an element which does not at all figure.

It may be answered that the law does have some relation to the considerations which enter into law making and that its purpose is to prevent fraud being practiced on the public.

We have already asked why we, of all the manufacturers and merchants in this District, should be singled out as presumable swindlers, whose business it is necessary to regulate, and the public to safeguard by law, but passing this, let us see

if there is any fraud in selling bread of weights different from those which are prescribed.

In the first place has the public any natural right to demand of, or to require us to sell bread of any given or specified weight, at any given or specified price, or to ask that we be limited to a certain rate of profit?

On the other hand have we not a natural right to make and sell bread, providing it is pure and wholesome, in any weights we may wish, whether it be in those prescribed or some other weights, and have we not also a natural right to fix our prices and to say what profits we should receive?

If we have this natural right, and the public has no natural right to require us to sell otherwise than we desire, then there is assuredly no violation of the public's right, and there can be no fraud in selling a loaf of bread of different weights from those prescribed.

Has the public any natural right to require us to make any representations, by way of a label or otherwise, as to how much a loaf of bread weighs?

When a loaf of bread is sold as such and no representations are made as to its weight, there can be no misrepresentation and consequently no fraud.

Unless a price is fixed at which the different weights are to be sold there can be no fraud, because without a price be fixed, no person has any right to demand that I sell him any given quantity of bread, for any given price.

In view of these considerations is there any fraud in selling bread in weights different from those prescribed, and is there any reason why we should be divested by law of our natural right to sell in such quantities as we may desire or our trade demand, or in other words is there any reason to make the exercise of our natural rights a crime?

Now if time will permit me I would like to say a few words in relation to the several provisions of the proposed law.

Section 1, after the usual preamble, is what may be designated as a health measure.

This section is wholly unnecessary, because in the first place our bread is uniformly made in clean and sanitary places, of good, wholesome flour and does not contain any deleterious substance or material, and as our business is a pleasure and pride to us, and our best interests require it we will go on (whether there be a law or not) making our bread in the way provided. In the second place, the health regulations of

the District and the National Pure Food Law make this section wholly unneeded. Our efficient and energetic health officer has already ample power to protect the public against the evils comprehended by this section.

Section 2 relates to and prescribes the weights in which we shall make our product.

I have already stated my objections to this particular feature and it will not again be necessary to repeat them.

After doing this it then provides for affixing labels to the tops of loaves.

Our objections to the label features are in part indicated by the objections we have made to the weight provision, but there are other objections to it.

In the first place we object to it unless all other manufacturers and merchants are also required to sell their products and wares in precise weights and in no other way, and are also required to affix labels to their wares.

We also object to it because it provides for an arbitrary size, shape, color and style.

Because it will be useless and not read by the consumer, and he will doubtless object to having a label of such size pasted on his loaf.

We further object to the label because many of us already use labels, which are the subjects of copyright, and designed to advertise our business or a particular brand of bread, both entirely legitimate objects.

The consequences of this requirement would necessarily be that we would be forced to use two labels on each loaf, which would certainly make the smallest size this law permits look like a suit case which had been on a visit to the Continent.

The "stale" bread clause in Section 2, which provides that bread after it is eight hours old shall be regarded as stale, is certainly a new one on us, as the line of demarkation between stale and fresh bread is not easily determined, because it differs in different breads and is frequently controlled by the mode of handling, the exposure, climate and atmospheric conditions.

We object to Section 3 because it imposes too great a hardship on the baker and seller of bread, in this, that it would amount to every baker requiring to make each loaf of bread several ounces heavier than the required weight, in order to assure its weight at the time of sale in order to satisfy some captious customer, who insisted on each loaf being weighed.

This section is also inconsistent with other sections of the

Act, and particularly of Section 6, in this, that while twenty-five or fifty loaves weighed while hot, at the bakeries, probably would weigh the aggregate required, yet there could well be individual loaves among them which might weigh below the weight required for a single loaf, or which might so dry out as to weigh less. This would subject the grocer to a loss of a sale of that particular loaf, or to a prosecution if he sold it, or if he did not sell it, he would insist on returning it to us, and it would be a total loss to us, despite the fact that the loaf may have been originally of sufficient weight, or at least have been so when weighed with twenty-four or forty-nine other loaves.

With respect to Section 4, so far as it relates to fines, the general objections we have made to the whole law will apply to it, as will also many of the specific objections which we have made or will later make to its separate provisions.

This section, however, does contain one paragraph which would be most amusing were this not too serious a matter to permit us to entertain such a feeling.

It is the attempt to control by law, climatic and atmospheric conditions, and to judicially decree that a loaf of bread which might have originally weighed a full pound, has no business, no matter how it was made or kept, to dry out more than one-half ounce in eight hours.

If such a provision as this is to become a law, we might just as well go out of business at once, and without waiting for the ruin which will inevitably come, if we attempt to observe it.

For to observe it we would be obliged to have our bread come out of the ovens, each loaf weighing at least two ounces more than the weight required.

In other words, we would have to give two ounces away to be on the safe side, to insure grocers against prosecution and ourselves against the probable return and entire loss of a loaf which had had the temerity, perversity and indecency to dry out more than a half ounce.

We have no objection to the non-application clause of Section 5 to the articles therein mentioned, because we do not believe that the excepted articles should be sold by precise weights any more than bread should be, but if bread is to be so sold, we see no good reason why the legislators should not also enact that every food stuff should be only sold in exact weights.

With respect to the provisions in Section 5 as to "stale" bread, the views before expressed apply, and it only is necessary to say in addition that it does not seem reasonable to prevent us from selling a "stale" loaf if we have a demand for it, simply because the loaf has had the bad taste to lose two or more ounces of its original weight.

As a matter of fact there are quite a number of people, who, from choice and not poverty, prefer bread that is at least a day old, and this despite the fact that it may have lost more than two ounces of its original weight.

We object to Section 6 because it is too confined and restricted in its scope, and if it is enacted at all, should be broad enough to cover all bread sold under special contract, and whether to hotels, restaurants, cafés, boarding houses, private families or grocers. Many persons prefer a hard-baked loaf which naturally means a loss of weight.

Section 7 relates merely to modes of enforcing the law, and is probably a proper provision if the law is to be enacted. The proviso, however, to this section, to the effect that weights taken at the bakeries shall be in drafts of not less than twenty-five or more than fifty loaves to the draft, would benefit us not at all, for the twenty-five or fifty loaves would probably weigh the necessary aggregate and yet, doubtless, there would be a number of individual loaves in the draft which would run short, so that if these came to a grocer and were sold by him, or were found in his possession by the Sealer of Weights and Measures, a prosecution and fine would result, or the short-weight loaves would be returned to us and we would lose their value, and this, too, notwithstanding the other loaves which had been in this particular draft had each weighed materially over the prescribed weight and the persons who had purchased them had gotten the advantage of the extra weight.

The author of the bill evidently, in drawing this proviso, recognized what is known to every practical baker, namely, the physical impossibility of so scaling off, or cutting up dough that the loaves, although of equal weight when they go into the ovens will be equal in weight when they come out.

There is another matter which this prososed law does not take into consideration, the fact that many of us are engaged to a considerable extent in supplying a trade outside of the District of Columbia, in localities where there are no laws

prescribing the weights of loaves and to which we send bread of different weights from those in this measure prescribed.

What would happen to us under the law, should the Sealer find several hundreds or thousands of loaves in our possession differing in weight from those prescribed?

Would he accept our statements that it was intended for shipment and outside sale? We very much doubt it, and possibly the police judge, when we were taken before him, would not credit our story, and we would be convicted of an offence of which we were entirely innocent.

We are all believers in the effort which is now under way for a Greater Washington, and many of us have given our time and money to promote this cause, but if trade is to be hampered by such laws as is here proposed there will not be much inducement for others to come here and to embark in business or for those who are here, to remain.

In conclusion, gentlemen, permit me to say that I very well recognize that if the majority of the people were asked if there should be a law controlling the weight of bread, or for that matter the weight of anything else, their answer would be given without consideration and would be invariably in the affirmative, and the thought prompting the answer would naturally be that such a law will prevent us from being cheated.

This bill has all the earmarks of its author's desire to frame a bill which would be a guarantee that the public would get every ounce of bread which they thought they were getting (if they gave it a thought at all); but right here, allow me to say, as a seller of many millions of loaves, that weight is not the most frequent concern of the greater number of bread buyers. The size of the slice and the number of slices a loaf will cut, are alike the thoughts of the lady who is conducting a boarding house, and the mother who has a large family to feed from a small purse. Such classes of people appeal to us as needing protection by law, in their bread purchases, if anybody does, and yet if you offer them a loaf that will make more slices than another loaf which weighs two ounces more and will cut fewer slices, they will without exception select the loaf which will net the most slices.

Of course, by nature they would prefer to get both more slices and more weight in the same loaf, for the same reason that the majority of people like to buy a $40.00 suit of clothes for $20.00, and appreciate it very much more if they are certain the dealer lost $5.00 on the sale.

I have spoken at great length on this subject, but I feel justified in having done so, because it is a matter of vital importance to me and the others for whom I speak, and for our industry, and after hearing me and considering this matter, I feel assured that you will not recommend the proposed law to Congress, but that you will, on the contrary, conclude that it will be more advisable to permit us to continue the manufacture and sale of bread by the loaf, without reference to weight, leaving it to business competition to regulate size, weight and shape.

I thank you for your attention.

JANUARY TERM, 1909

IN THE

COURT OF APPEALS

DISTRICT OF COLUMBIA

(No. 4, Special Calendar)

THE DISTRICT OF COLUMBIA
Plaintiff in Error

vs.

GEORGE HAUF
Defendant in Error

No. 1966

Brief for the Defendant in Error

ALEXANDER H. BELL
For the Defendant in Error

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